

[TWO PARTY REA - STRIP CENTER]

TABLE OF CONTENTS  
OF  
CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT  
DATED  
AS OF MARCH 20, 1989

Westview Shopping Center  
Streamwood, Illinois

		<u>PAGE</u>
	<u>RECITALS</u>	1
ARTICLE 1	<u>DEFINITIONS</u>	3
1.1	Building(s); Main Buildings	3
1.2	Center or Shopping Center	4
1.3	Common Area	4
1.4	Common Area Improvements	5
1.5	Common Improvement Work	5
1.6	Common Utility Facilities	5
1.7	Floor Area	6
1.8	Improvements	7
1.9	Joint Improvement Agreement ("JIA")	7
1.10	Occupant	7
1.11	Off-Site Easements	7
1.11A	On-Site Third Party Easements	8
1.12	[Blank]	9
1.13	Parcel	9
1.14	Parking Area	9
1.15	Party	9
1.16	Perimeter Sidewalks	9
1.17	Permissible Building Area	10
1.18	Permittees	10
1.19	Person	10
1.20	Project Engineer	10
1.21	Shopping Center Site	10
1.22	Supplemental Agreement	10
1.23	Truck Facilities	11
ARTICLE 2	[Blank]	11
ARTICLE 3	<u>EASEMENTS</u>	11
3.1	Definitions and Documentation	11
3.2	Easements for Use of Common Area	13
3.3	Easements for Perpetual Access Roads	15
3.4	Easements for Utility Facilities	16
3.5	Construction Easements	19
3.6	Grantor's Removal of Common Foundations	21
3.7	Self-Help Easements	22
3.8	[Blank]	23
3.9	Exterior Light Easements	23

89143137

(i)



This instrument was prepared by  
and after recording return to:  
John J. Lawlor, Esq.  
Sonnenschein Carlin Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EX-100-100

EX-100-100

3-1-1

		PAGE
3.10	Abandonment of Easements	24
3.11	Other Grants of Easement; Dedications	25
3.12	Easements to Public Utilities	25
3.13	Easements for May's Pylon Sign	27
3.14	[Blank]	28
 ARTICLE 4	 <u>PLANS AND SPECIFICATIONS</u>	 28
4.1	General Design Data	28
4.2	Plans of May	28
4.3	Center to be Architecturally Harmonious	29
4.4	Developer Building Preliminary Plans	29
4.5	[Blank]	30
4.6	Approval of Developer Building Preliminary Plans	30
4.7	Reasons for Disapproval	31
4.8	Approval of Fire Rating Bureau	31
 ARTICLE 5	 <u>GENERAL CONSTRUCTION REQUIREMENTS</u>	 32
5.1	"Construction" Defined	32
5.2	Construction to Proceed in Reasonable Manner; Coordination of Construction	32
5.3	Construction Barricades	32
5.4	Initial Construction, Storage Sites and Time Schedules - Approval by Parties	33
5.5	License for Subsequent Construction and Maintenance	34
5.6	Safety Matters; Indemnification	35
5.7	Evidence of Party's Compliance with Construction Requirements	36
5.8	Liens	36
5.9	Workmanship; Compliance with Laws and Insurance Requirements	37
 ARTICLE 6	 <u>CONSTRUCTION BY DEVELOPER</u>	 38
6.1	Joint Improvement Agreement	38
6.2	Developer's Construction Duty	39
6.3	Developer's Completion Duty	39
6.4	"Commence Construction" Defined	41
 ARTICLE 7	 <u>CONSTRUCTION OF MAIN BUILDING BY MAY</u>	 41
7.1	May's Construction Duty	41
7.2	May's Completion and Opening Duty	44
7.3	Limitation on Opening Time	46
 ARTICLE 8	 <u>FURTHER REQUIREMENTS RELATING TO CONSTRUCTION</u>	 47
8.1	Developer Improvements	47
8.2	May's Improvements	48
8.3	Building Sites Common Area Until Construction Commenced	48

# UNOFFICIAL COPY

		PAGE
ARTICLE 9	<u>MAINTENANCE, REPAIR, ALTERATIONS AND RESTORATION - GENERAL</u>	49
9.1	Maintenance of Improvements on Each Parcel	49
9.2	Damage or Destruction of Developer Building	49
9.3	[Blank]	50
9.4	[Blank]	50
9.5	Duty to Complete Rebuilding	50
9.6	Clearing Debris from Razed Improvements	50
9.7	Miscellaneous Repairs and Alterations	51
ARTICLE 10	<u>OPERATION, MAINTENANCE, REPAIR AND RESTORATION -- COMMON AREA</u>	51
10.1	Maintenance of Common Area	51
10.2	[Blank]	51
10.3	General Operation and Maintenance Standards	52
10.4	Indemnification of Parties	54
10.5	Indemnification for Non-Performance	55
10.6	Illumination of Common Area	55
10.7	Failure of Performance	55
10.8	Right of Way to Maintain Its Parcel	56
10.9	Request to Have Parcel Maintained by Developer	57
10.10	Damage to or Destruction of Common Area Improvements	57
10.11	[Blank]	58
ARTICLE 11	<u>PARKING REQUIREMENTS</u>	58
11.1	Required Parking Ratio	58
11.2	Charges for Parking; Employee Parking Area	59
11.3	Use of Parking Area	60
ARTICLE 12	<u>OPERATING COVENANTS OF DEVELOPER</u>	60
12.1	General Operating Covenants	60
ARTICLE 13	[Blank]	62
ARTICLE 14	<u>GENERAL COVENANTS - CENTER APPEARANCE</u>	62
14.1	Location of Buildings	62
14.2	Size of Buildings	62
14.3	Height Limitations	62
14.4	Removal of Developer Buildings	63
14.5	Limitation on Detrimental Characteristics	63
14.6	Non-Interference with Common Area	64
14.7	Fences; Obstructions	65
14.8	Changes in Common Area	65
14.9	Signs	65
14.10	Duration of Covenants	66

UNOFFICIAL COPY

Property of Cook County Clerk's Office

8419313

	<u>PAGE</u>
ARTICLE 15 <u>CESSATION OF BUSINESS OR TRANSFER OR CONVEYANCE OF PARCELS</u>	66
15.1          Temporary Cessation of Business	66
15.2          Transfer During Construction; Other Transfers	67
15.3          [Blank]	68
15.4          [Blank]	68
ARTICLE 16 <u>INSURANCE</u>	69
16.1          Duty to Carry Casualty Insurance	69
16.2          General Requirements for Casualty Policies	69
16.3          Use of Policy Proceeds	70
16.4          Duty to Carry Liability Insurance	72
16.5          General Requirements for Liability Policies	72
16.6          Indemnification By Parties	73
16.7          Contractual Liability Insurance	74
16.8          Self-Insurance; "Blanket Policies"	74
16.9          Certificate of Insurance	74
16.10        Release of Liability and Waiver of Subrogation -- Parties	75
ARTICLE 17 <u>CONDEMNATION</u>	76
17.1          "Condemnation" and "Condemnation Date" Defined	76
17.2          Restoration of Developer Building	76
17.3          Restoration of Parking Area	77
17.4          Termination Rights	78
17.5          Waiver of Award	79
17.6          No Termination of Easements and Licenses	79
17.7          Instrument Evidencing Termination	79
17.8          Termination of Benefits	79
ARTICLE 18 <u>REAL ESTATE TAXES</u>	80
18.1          Payment of Taxes	80
18.2          Contesting Taxes	80
18.3          Failure to Pay Taxes	81
18.4          Allocation of Taxes	81
ARTICLE 19 <u>EXCUSES FOR NON-PERFORMANCE</u>	81
ARTICLE 20 <u>ARBITRATION</u>	82
20.1          Disputes Subject to Arbitration	82
20.2          Arbitration Procedures	82
20.3          Arbitration as a Pre-Requisite to Judicial Proceedings	85
ARTICLE 21 <u>NOTICES AND APPROVALS</u>	85
21.1          Notice to Parties	85
21.2          Form and Effect of Notice	87

# UNOFFICIAL COPY

		PAGE
21.3	Time and Form of Approvals	87
21.4	Mortgagee	89
ARTICLE 22	<u>AMENDMENT</u>	90
ARTICLE 23	<u>EXPIRATION DATE</u>	91
ARTICLE 24	[Blank]	91
ARTICLE 25	<u>MISCELLANEOUS</u>	91
25.1	Exhibits	91
25.2	References to Articles, Sections and Subsections	92
25.3	Table of Contents and Captions	92
25.4	Locative Adverbs; Term "Including"	92
25.5	Attorney's Fees	92
25.6	Waiver of Default; Rights and Remedies Cumulative	93
25.7	Payment on Default; Deduction; Lien	94
25.8	No Partnership, Joint Venture or Principal-Agent Relationship	96
25.9	Successors	96
25.10	Severability	96
25.11	Governing Laws	97
25.12	Release of Parties; Assumption	97
25.13	Sale-Leaseback; Release of Fee Owner	98
25.14	Not a Public Dedication	99
25.15	Written Consent Required	99
25.16	Reasonableness of Consent	100
25.17	Covenants Run With the Land	101
25.18	Rules for Center	102
25.19	Default Shall Not Permit Termination of REA	102
25.20	Right to Enjoin	102
25.21	Rights, Privileges, and Easements with Respect to Liens	103
25.22	Certification of Floor Area	103
25.23	Successor Not a Party	104
25.24	Estoppel Certificate	109
25.25	Correction of Parcel Descriptions	109
25.26	Identification of Utility Facilities	110
25.27	Zoning and EPA Warranty	111
25.28	Time of Essence	111
25.29	REA for Exclusive Benefit of Parties	111
25.30	No Merger	112
25.31	Counterparts	112
25.32	Exculpation of Trustees	112
25.33	Phase 1 REA	113
25.34	Phase 2 Prior Declaration	114
25.35	Developer's Obligation to Extend Pipeline Lease	114
25.36	Method of Payment	114
SIGNATURES		116

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20140303



EXHIBITS

A - LEGAL DESCRIPTIONS

- A-1 LEGAL DESCRIPTION OF DEVELOPER PARCEL
- A-2 LEGAL DESCRIPTION OF MAY PARCEL
- A-3 LEGAL DESCRIPTION OF SHOPPING CENTER SITE
- A-4 LEGAL DESCRIPTION OF HANOVER PARK PARCEL
- A-5 LEGAL DESCRIPTION OF PIPELINE PROPERTY
- A-6 LEGAL DESCRIPTION OF CONSTRUCTION STAGING AREA

B - SITE PLAN

C - MINIMUM TECHNICAL SPECIFICATIONS

D - BUILDINGS' HEIGHT LIMITATIONS

E - RULES, REGULATIONS AND MAINTENANCE STANDARDS

F - SIGN CRITERIA

[T H I S P A R T Y R E A - S T R I P C E N T E R]

CONSTRUCTION, OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT

Westview Shopping Center  
Streamwood, Illinois

This Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as the "REA") is made as of the 20<sup>th</sup> day of March, 1989, by and between P&D PARTNERS LTD. NO. 111, AN ILLINOIS LIMITED PARTNERSHIP, an Illinois limited partnership ("P&D Partners"), AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under a Trust Agreement dated September 28, 1987 and known as Trust No. 103625-07 ("Trustee") (P&D Partners and Trustee are sometimes hereinafter collectively referred to as "Developer"), and THE MAY DEPARTMENT STORES COMPANY, a New York corporation authorized to do business in Illinois (hereinafter referred to as "May").

RECITALS

1. Trustee owns in fee simple certain land situated in the Village of Streamwood, County of Cook, and State of Illinois, more particularly described in Exhibit A, Part 1 (hereinafter called the "Developer Parcel") and located as shown on Exhibit B (the "Site Plan"). P&D Partners is the beneficiary of the above-referenced Trust under which Trustee holds title to the Developer Parcel.

2. May owns in fee simple certain land situated in the Village of Streamwood, County of Cook, and State of Illinois, more particularly described in Exhibit A, Part 2 (hereinafter called the "May Parcel") and located as shown on Exhibit B.

3. The Natural Gas Pipeline Company of America ("Pipeline Company") owns in fee simple certain land situated in the Village of Streamwood, County of Cook, and State of Illinois,

89143137

more particularly described in Exhibit A, Part 5 (hereinafter called the "Pipeline Property") and located as shown on Exhibit B. The Pipeline Property is a strip of land approximately 1,256 feet in length and 82.5 feet in width which separates the Hanover Park Parcel (as hereinafter defined) from the Developer Parcel. Pipeline Company has granted to Trustee a lease permitting parking, ingress to and egress from the May Parcel and/or Developer Parcel and/or the Hanover Park Parcel upon, into, onto and over the Pipeline Property pursuant to that certain Indenture of Lease dated July 15, 1988 by and between Pipeline Company, Trustee and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated September 28, 1987 and known as Trust No. 103624-08, and recorded with the Cook County Recorder of Deeds on November 21, 1988 as Document No. 88517156 (and by means of this REA Developer grants May easements and licenses coupled with an interest for parking, ingress and egress upon, onto and over the same) (the "Pipeline Lease"). For purposes of this REA and the Joint Improvement Agreement (as hereinafter defined), Developer acknowledges and agrees that Developer's interest in and to the Pipeline Lease and the Pipeline Property shall be subject to all of the terms, conditions and agreements contained in this REA and the Joint Improvement Agreement, to the extent permissible under the Pipeline Lease.

4. The Developer Parcel, May Parcel, and the Pipeline Property, as individually described in Exhibit A, Parts 1, 2 and 5, respectively, are collectively described in Exhibit A, Part 3 and hereinafter collectively called the "Shopping Center Site."

5. The Parties desire to make an integrated use of the Shopping Center Site and to develop and improve the Shopping Center Site as a shopping center.

6. The Parties desire to provide for the construction, maintenance and operation of the Common Area (as hereinafter defined) and the buildings and other improvements to be situated on the Shopping Center Site, and in that regard to create certain rights, privileges and easements and to impose certain restrictions and covenants upon their respective Parcels and the Shopping Center Site.

NOW, THEREFORE, for good and valuable considerations, including the mutual promises, covenants and agreements herein contained, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

As used in this REA, the following terms have the following meanings:

#### Section 1.1 Building(s); Main Buildings

(1) With respect to May, "Building" or "May's Main Building" or words to similar effect means the building which has been, will be or may be constructed or replaced by or for May within May's Permissible Building Area, and the Truck Facilities and other facilities within May's Permissible Building Area, which are permitted under this REA, but such term does not include Common Area Improvements.

(2) With respect to Developer, "Building(s)" or "Developer's Main Building" or words to similar effect mean(s) any building(s) which has (have) been, will be or may be constructed or replaced by or for Developer within Developer's Permissible Building Area(s), which areas are referred to on Exhibit B hereto, and the Truck Facilities and other facilities within Developer's Permissible Building Area(s), which are permitted under this REA, but such term does not include Common Area Improvements.

Section 1.2 Center or Shopping Center

"Center" or "Shopping Center" means the Developer Parcel, May Parcel, and Pipeline Property, together with all buildings and other improvements constructed at any time thereon, which Center shall be known as "Westview Shopping Center," which name shall not be changed without the consent of the Parties.

Section 1.3 Common Area

"Common Area" means all areas within the boundaries of the Shopping Center Site that under this REA are or are to be made available for the non-exclusive use, convenience and benefit of all Occupants and their respective Permittees.

(1) Among other things, Common Area includes: (a) the Parking Area; (b) sidewalks and walkways located outside all Buildings, including Perimeter Sidewalks around all Buildings and including sidewalks and walkways providing pedestrian access to and ingress and egress to and from the Parking Area; (c) landscaped and planted areas outside all Buildings and in the Sign Easement Area shown on the Site Plan (except for landscaped and planted areas between the May Building and the Perimeter Sidewalks around the May Building); (d) the Common Utility Facilities, on or off-site; (e) Perpetual Access Roads and other roadways on the Shopping Center Site, including, without limitation, roadways contained on Off-Site Easements (as hereinafter defined), to provide vehicular access to and from and in and out of the Parking Areas to streets contiguous to the Center, including entrances and exits; and (f) curbs and lighting standards, traffic and directional signs.

(2) Common Area does not include (a) any Building; (b) any interior areas within any Building; (c) any community room; (d) any Truck Facilities; (e) any signs or sign panels which identify particular Parties or Occupants; (f) either on-site or off-site Developer pylon signs, unless May is represented on such pylon signs;

89143137

(g) the pylon sign structure shown on the Sign Easement Area on the Site Plan; (h) any utility easements separately serving the Sign Easement Area shown on the Site Plan; and (i) lighting fixtures on or appurtenant to Buildings used to floodlight or illuminate or decorate the facade of any Building.

## Section 1.4 Common Area Improvements

"Common Area Improvements" mean all improvements to be constructed in the Common Area under the terms of the Joint Improvement Agreement (including but not limited to Common Utility Facilities on or off-site), all Perimeter Sidewalks, all other improvements which would be part of the "Common Area" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign of the same as may be agreed to by the Parties.

## Section 1.5 Common Improvement Work

"Common Improvement Work" (which is also occasionally referred to, both here and in the Joint Improvement Agreement, as "Common Area Work") means all of the work necessary to complete all improvements to be constructed under the terms of the Joint Improvement Agreement.

## Section 1.6 Common Utility Facilities

"Common Utility Facilities" mean utility systems and facilities from time to time situated on or off the Shopping Center Site serving the Shopping Center Site, up to the Building wall of any Building, for use or service in common by both Parties or for the service of the Common Area, including, without limitation, those installed under the provisions of the Joint Improvement Agreement and replacements thereof, such as the following: storm drainage and retention facilities and sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground

89143137

telephone cables and systems, cable television systems and all other utility systems and facilities for such common use or service; excluding, however the lighting fixtures described in Section 1.3(2)(i).

Section 1.7 Floor Area

"Floor Area" means the floor space whether or not actually occupied, from time to time, in any completed structure located on the Shopping Center Site.

Floor Area includes:

- (a) Basement space and selling or storage areas below ground level;
- (b) Balcony and mezzanine space to the extent used for selling; and
- (c) Space occupied by columns, stairs, escalators, dumb-waiters, conveyors or other interior equipment within the building involved (except as excluded below).

Notwithstanding the foregoing provisions of this Section, Floor Area shall not include:

- (a) The upper levels of any multi-deck stock areas;
- (b) Areas, whether physically separated or not, used exclusively to house mechanical, electrical, telephone, computer, heating, ventilating and air-conditioning; or for any garbage (or other waste) collection area or waste bailing or compaction area; or for telecommunication or other electronic or computer equipment (other than sales floor point of sale terminals) and similar building operations equipment and spaces;
- (c) All Truck Facilities;
- (d) All Common Area; and
- (e) Sheds and other structures used exclusively for the maintenance (or storage of equipment therefor) of the Common Area.

891A3137

Floor Area shall be measured from the exterior faces of the exterior walls (including basement walls), except that where party and interior common walls are involved, the Floor Area shall be measured from the center thereof instead of from the exterior faces thereof.

With respect to initial construction of any Building, the same shall be excluded from Floor Area until the date upon which an Occupant of the Building first opens therein for business to the public.

## Section 1.8 Improvements

(1) With respect to May, "Improvements" means May's Building and the Common Area Improvements on the May Parcel.

(2) With respect to Developer, "Improvements" means the Developer's Building(s) and the Common Area Improvements on the Developer Parcel.

## Section 1.9 Joint Improvement Agreement ("JIA")

"Joint Improvement Agreement" (sometimes also referred to herein as the "JIA") means that certain Joint Improvement Agreement which has been entered into contemporaneously herewith as a separate agreement between Developer and May, which agreement relates in part to performance of Common Improvement Work and construction of Common Area Improvements.

## Section 1.10 Occupant

"Occupant" means May, Developer or any other Person from time to time entitled, by lease, deed, or other instrument or arrangement, to use and occupy Floor Area within the Center.

## Section 1.11 Off-Site Easements

"Off-Site Easements" means and includes those certain easements benefiting and appurtenant to the May Parcel and/or Developer Parcel more particularly described as follows:

(a) An easement for the location, construction, installation, use, maintenance, repair, replacement, alteration or

89143137



removal of the May pylon sign described in Section 1.3(2)(g) (including necessary easements for utility lines servicing such sign), located in the Sign Easement Area shown on the Site Plan;

(b) Easements for parking, ingress to and egress from the May Parcel and/or Developer Parcel over the adjacent property south of the Shopping Center Site, which is owned by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated September 28, 1987 and known as Trust No. 103624-08, more particularly described in Exhibit A, Part 4 (the "Hanover Park Parcel," or "Phase 1"), granted to Trustee pursuant to that certain Cross-Access and Parking Easement Agreement dated May 31, 1988 (the "Cross-Access Agreement"), and recorded June 16, 1988 as Document No. 88263899 in the office of the Recorder of Deeds of Cook County, Illinois;

(c) Easements and licenses coupled with an interest for parking, ingress to and egress from the May Parcel and/or Developer Parcel and/or the Hanover Park Parcel into, onto, over and through the Pipeline Property pursuant to the Pipeline Lease; and

(d) Easements for storing, retaining, and detaining storm water in the Ranger Park retention/detention pond (the "Pond"), and for maintaining, repairing, dredging and excavating the Pond for the purpose of assuring its continuing capacity to detain such storm water, as more particularly described in that certain Agreement dated April 18, 1988, by and between the Hanover Park Park District and First National Realty & Development Company, Inc., and recorded August 19, 1988 as Document No. 88378092 in the office of the Recorder of Deeds of Cook County, Illinois.

## Section 1.11A On-Site Third Party Easements

"On-Site Third Party Easements" means those certain easements for parking, ingress to and egress from the Hanover Park

Parcel over the May Parcel and/or the Developer Parcel, granted to American National Bank and Trust Company of Chicago, as Trustee under a Trust Agreement dated September 28, 1987 and known as Trust No. 103624-08, as owner of the Hanover Park Parcel, pursuant to the Cross-Access Agreement.

Section 1.12 [Blank]

Section 1.13 Parcel

"Parcel" or "Parcels" means the Developer Parcel or May Parcel, or any combination or portions thereof, as the context may require, and unless specified otherwise herein includes all buildings and other improvements from time to time located therein.

Section 1.14 Parking Area

"Parking Area" means all areas in the Center which are set apart or used from time to time for the passage and parking of motor vehicles and for pedestrian traffic incidental thereto, including, without limitation, traffic lanes, aisles, roadways, vehicle parking stalls, walkways, curbs, gutters and landscaping within or adjacent to any such areas, grade separations, including berms and retaining walls, within or adjacent to said areas, lighting standards, traffic and directional signs, and traffic striping and markings, and all other improvements which at any time are erected on such areas for the purpose of accommodating the foregoing uses.

Parking Area does not include any Truck Facilities.

Section 1.15 Party

A "Party" means Developer or May and "Parties" means both of the foregoing, or any successor Person(s) to such Persons acquiring any interest of a Party in or to any portion of such Party's Parcel, except as is otherwise provided in Section 25.23.

63143137

## Section 1.16 Perimeter Sidewalks

"Perimeter Sidewalks" means the sidewalks, curbs and planting areas integrated therewith or thereon that immediately adjoin the building perimeters of each Building.

## Section 1.17 Permissible Building Area

"Permissible Building Area" means an area designated as a "Permissible Building Area" on Exhibit B within which a building of a certain size and height has been, will be or may be constructed as hereinafter more fully provided.

No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area.

## Section 1.18 Permittees

"Permittees" means all Occupants and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires.

## Section 1.19 Person

"Person" or "Persons" means individuals, partnerships, firms, associations, corporations and any other form of business or government organization or entity, or one or more of them, as the context may require.

## Section 1.20 Project Engineer

"Project Engineer" means the applicable engineer that is from time to time designated by the Parties to perform the functions of the Project Engineer under the Joint Improvement Agreement. The presently designated Project Engineer is Ragnar Banson Inc.

## Section 1.21 Shopping Center Site

"Shopping Center Site" or, sometimes, the "Shopping Center" or the "Center", means the Developer Parcel, May Parcel and the Pipeline Property, as collectively described on Exhibit A, Part 3, and shown on Exhibit B.

63143137

Section 1.22 Supplemental Agreement

"Supplemental Agreement" means that certain Supplemental Agreement which has been entered into contemporaneously herewith as a separate agreement between the Developer and May, which agreement relates to certain obligations with respect to Common Area, utilities and other matters.

Section 1.23 Truck Facilities

"Truck Facilities" means the following whenever located on the Parcel of any Party:

(a) truck docks, open or enclosed, and ramps and approaches thereto; and

(b) areas within or immediately contiguous to a Building specifically constructed exclusively for such Building's truck loading, unloading, parking or turn-arounds.

Those portions of Truck Facilities that are not intended for exclusive use by either Party (such as driveways and turn-arounds within the Parking Area) shall constitute a part of the Common Area and shall not be part of "Truck Facilities."

ARTICLE 2

[BLANK]

ARTICLE 3

EASEMENTS

Section 3.1 Definitions and Documentation

For the purposes of this Article, the following will apply:

(a) A Party granting an easement is called the "Grantor," it being intended that the grant shall thereby bind and include not only such Party but also its successors and assigns, who until the Expiration Date shall act through, and in all respects be bound by, the acts of the "Party" of the burdened "Parcel."

63143137

(b) A Party to whom the easement is granted is called the "Grantee", it being intended that the grant shall benefit only the "Party" of the dominant "Parcel" (meaning the present "Party" and any successors or assigns of the present "Party" who also qualify as a "Party" to this REA under Sections 1.15 and 25.23 hereof). In addition, although not for the direct benefit of Occupants or Permittees, the Grantee may permit from time to time its Occupants and Permittees, the right to use easements created pursuant to Article 3; provided, that any such use shall be subject to the restrictions and limitations thereon contained in this REA; and further provided, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of creation of such easement.

(c) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in," "to," "on," "over," "through," "upon," "across" and "under," or any one or more of the foregoing.

(d) The term "Separate Utility Facilities" means any of the following not installed under the terms of the Joint Improvement Agreement and not for use in common by both Parties or for service of the Common Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power, cables and systems, underground telephone cables and systems, cable television systems and all other utility systems and facilities reasonably necessary for the use or service of any Improvement situated on any Parcel.

(e) The term "Common Utility Facilities" is defined in Section 1.6.

63143137

(f) The grant of any easement by a Grantor shall bind and burden its Parcel which shall, for the purpose of this REA, be deemed to be the servient tenement (where only a portion of the Parcel is bound and burdened by the easement, only that portion shall be deemed to be the servient tenement).

(g) The grant of an easement to a Grantee shall benefit and bind its Parcel which shall, for the purpose of this REA, be deemed to be the dominant tenement. No property other than the Shopping Center site, as it may exist in accordance with the terms of this REA, shall constitute part of the dominant tenement.

(h) Unless otherwise expressly provided herein, all easements granted herein are non-exclusive and are irrevocable and perpetual.

(i) All easements herein shall be easements appurtenant and not easements in gross.

(j) All easements granted hereunder shall exist by virtue of this REA, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Party will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by each Party.

(k) No grant of easement pursuant to this Article 3 shall be construed to impose any greater obligation on any Party to construct or maintain its Building(s) except as expressly provided in this REA.

Section 3.2 Easements for Use of Common Area

Each Party hereby grants to the other Party easements in the Common Area on its (Grantor's) Parcel for:

- (1) ingress to and egress from the Grantee's Parcel;
- (2) the passage and parking of vehicles;
- (3) the passage and accommodation of pedestrians;
- (4) enjoyment by Grantee of its rights and interests under the Off-Site Easements; and
- (5) the doing of such other things as are authorized or required to be done on the Common Area under this REA or the JIA;

provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this REA, including those portions of the Common Area shown on Exhibit B. Enjoyment of the easements granted by this Section shall commence on the date the Common Area in question is substantially completed.

Each Party shall have the right to eject from the Common Area on its Parcel any Person not authorized to use the same. In addition, each Party reserves the right to close off the Common Area of its Parcel for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorney and as both Parties shall reasonably approve, to prevent the acquisition of prescriptive rights by anyone; provided, however, before closing off any part of the Common Areas as provided above, such Party must give notice to the other Party or Parties of its intention to do so and must coordinate its closing with the activities of the other Party so that no unreasonable interference with the operation of the Center occurs.

E3143137

The easements provided for in this Section are subject to the rights to use the Common Area for other purposes provided for in this REA; however, no changes shall be made in the Common Area or in location or design of Common Area Improvements prior to the Expiration Date except as otherwise herein provided.

Notwithstanding any other provision of this REA, the easements granted under this Section shall terminate on the Expiration Date of this REA.

### Section 3.3 Easements for Perpetual Access Roads

Each Party hereby grants to the other Party perpetual easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on Exhibit B) on its (Grantor's) Parcel which are shown on Exhibit B as cross-hatched roadways (hereinafter referred to as "Perpetual Access Roads") for the purpose of providing ingress to and egress from: (i) the Grantee's Parcel and the Off-Site Easements, (ii) the Grantee's Parcel and Ramblewood Road, (iii) the Grantee's Parcel and Tower Drive via the Off-Site Easements, and (iv) the Grantee's Parcel and Barrington Road, together with the following rights and subject to the following restrictions and reservations:

(1) The use of the Perpetual Access Roads easements by any Person entitled to the use thereof shall be in common with all other such Persons; such easements and the land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements.

(2) Grantors of the Perpetual Access Roads easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Perpetual Access Roads, except to the extent

63143137



UNOFFICIAL COPY

Property of Cook County Clerk's Office

20110303

necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof (except for Developer's dedication of Ramblewood Road and Tower Drive shown on Exhibit B, which are contemplated as public rights-of-way pursuant to this REA and Article 2 of the JIA) or the accrual of any prescriptive rights to any Person therein.

(3) Grantors reserve the right from time to time after (but not before) the Expiration Date to change the location of the Perpetual Access Roads easements on their respective Parcels, provided, however, that access for pedestrian and vehicular traffic is not unreasonably restricted or its enjoyment in any way materially impaired by such changes, and provided, further, that a Grantor desiring to so relocate any such Perpetual Access Roads shall construct, at its own expense, a new roadway on such new location which is in all respects at least equal to the roadway in the old location and records in Cook County, an instrument which contains a site plan showing the location of such new roadway as it exists upon such Grantor's Parcel, along with the location of that portion of the old roadway easement which is being abandoned.

#### Section 3.4 Easements for Utility Facilities

Each Party hereby grants to the other Party perpetual easements in its (Grantor's) Parcel, except within such Party's Permissible Building Area, for the installation, use, operation, maintenance, repair, replacement, relocation and (at Grantee's election) removal of Separate Utility Facilities serving the Parcel of the Grantee and Common Utility Facilities.

All Separate Utility Facilities installed in the Common Area, whether installed under this Section or otherwise, and Common Utility Facilities shall be underground and the location of the Separate Utility Facilities shall be subject to the approval of the Party across whose Parcel the same are to be

located, with the location of Common Utility Facilities being determined by the Joint Improvement Agreement. The relocation of any Separate Utility Facilities shall be subject to the prior consent and approval, in its sole discretion, of the Party across whose Parcel the same are to be relocated.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair, replacement and any removal or relocation, at Grantee's cost, of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by Grantee only after two (2) weeks' advance notice to Grantor of Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after such advance notice to Grantor as is practicable under the circumstances. In addition, the Parties agree all such installation, maintenance, repair, replacement, removal, and relocation shall be performed in a manner that causes as little disturbance to Grantor as may be practicable under the circumstances and any and all portions of the surface area of Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored at the sole cost and expense of Grantee to essentially the same condition as the same were in prior to the commencement of any such work. The Grantee shall indemnify, hold harmless and, at Grantee's election, defend Grantor (with counsel reasonably acceptable to Grantor) from and against any and all liens, loss, liability, cost or expense (including attorneys' fees),

83143137

and liabilities incurred in connection with Grantee's exercise of the Separate Utility Facilities easements under this Section, except to the extent the same shall have been caused by Grantor's negligence or willful act or omission to act. None of such work or restoration, except emergency repair work, shall be initiated so that such work and the consequent restoration of the Grantor's Parcel shall be carried on during the period from November 20 through January 5 of any year, i.e., during the Christmas shopping season.

The Grantor of any easement for Separate Utility Facilities under this Section may use the utility facilities installed pursuant to such easement, provided the increase in costs incurred in order to make such utility facilities adequate to serve Grantor's additional use shall be borne by such Grantor and, provided, further, that Grantor complies with the requirements of subparagraphs numbered (2), (3) and (4) of the following paragraph of this Section.

Except during the period from November 20th through the following January 5th, the Grantor of any easement under this Section may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it, provided such relocation:

(1) may be performed only after Grantor has given Grantee thirty (30) days' notice of its intention to relocate such facilities;

(2) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and Grantor shall promptly reimburse Grantee for all cost, expense and loss incurred by Grantee as a result of such interferences or diminutions, or both);

(3) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(4) shall not be relocated other than underground; and

(5) shall be performed without cost or expense to Grantee, and, if Common Utility Facilities are involved, in accordance with plans approved by the Grantee.

All Common Utility Facilities lying within any Common Area shall for all purposes be deemed to be included within the definition of Common Area Improvements.

The Grantor shall indemnify, hold harmless and, at Grantee's election, defend Grantee (with counsel reasonably acceptable to Grantee) from and against any and all liens, loss, liability, cost or expense (including attorneys' fees), incurred in connection with Grantor's exercise of its rights under this Section 3.4, except to the extent the same shall have been caused by Grantee's negligent or wrongful act or omission to act.

#### Section 3.5 Construction Easements

Each Party hereby grants to the other Party easements in the Common Area of its (Grantor's) Parcel and where applicable in the Permissible Building Area on its Parcel, for:

(1) Construction pursuant to the Joint Improvement Agreement and pursuant to this REA including Articles 6, 7, 8, 9 and 17 of this REA;

(2) The construction, maintenance, use, repair and replacement of common footings and/or common foundations if Developer and May agree, in their discretion, to use common footings or common foundations for their respective improvements;

(3) The attachment and, subject to the provisions below, the replacement of attachments of water protection improvements

constructed on Grantee's building to and on building improvements of Grantor, provided the manner of attachment shall be designated in accordance with good construction practice in the manner customary for improvements of such type and so as not to impose any load on Grantor's building improvements;

(4) The installation, use, maintenance, repair, replacement and removal of building elements including underground footings and foundations for the purpose of supporting building improvements of Grantee, none of which building elements for which the easement is given, however, shall extend more than five (5) feet onto Grantor's Parcel; and provided, however, that any construction that is to take place in the easement area must take place in accordance with plans and specifications approved by Grantor; and

(5) The installation, use, maintenance, repair, replacement and removal of roof flashings encroaching upon the Parcel of the Grantor, provided such roof flashings do not encroach more than two (2) feet (or such greater amount as may be shown on the plans and specifications approved by Grantor, if such greater encroachment has been specifically approved) and are attached to a building constructed by Grantee within its Permissible Building Area.

The location of all easements under this Section shall be subject to the approval of Grantor. The plans and specifications showing the improvements specified in subparagraphs (1) through (4) of this Section shall be submitted to Grantor and approval thereof by Grantor shall constitute designation by each Grantor of the portions of its Parcel and Improvements to be used for such easements. Any such approval of Grantor shall not be unreasonably withheld or delayed, and any dispute over such approval shall be an arbitrable dispute.

88143137

88143137

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20110111

20110111

In connection with the initial construction of the May Building only, Developer hereby grants to May easements and licenses in, upon, over and through the parcel of land owned by Developer immediately west of the May Parcel, as more particularly described in Exhibit A, Part 6 (hereinafter called the "Construction Staging Area") and located as shown on Exhibit B, for May's: (i) construction pursuant to this REA, including Articles 7 and 8 of this REA; and (ii) material and equipment storage, construction shacks, other temporary improvements, construction staging area, and parking for workmen, trucks and construction equipment. The easements and licenses in the Construction Staging Area only, which are granted by this paragraph, shall expire upon the completion of the construction of the May Building pursuant to Article 7 of this REA. Developer warrants and represents to May that Trustee is the fee owner of the Construction Staging Area and that Developer has the power to grant May the aforesaid easements and licenses in the Construction Staging Area.

Each Grantee agrees to pay the Grantor that additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by Grantor which arises on account of Grantee's exercise of its easement rights under this Section. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section and in the event the exercise of the rights granted under this Section requires Grantee to enter upon the Parcel of Grantor, to first obtain the consent of Grantor as to the methods and timing in the exercise of such rights.

Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of the other Party, and shall not unreasonably interfere with or interrupt the business



UNOFFICIAL COPY

Property of Cook County Clerk's Office

70181123

operation conducted by the other Party in the Center. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed in the exercise by Grantee of the easements granted under this Section and shall indemnify, hold harmless and, at Grantor's election, defend Grantor (with counsel reasonably acceptable to Grantor) from and against all liens, loss, liability, cost or expense (including attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent the same shall have been caused by Grantor's negligent or wrongful act or omission to act.

Grantee's improvements in such easements shall, for purposes of maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this REA, be deemed part of the Grantee's Parcel and Building and shall be deemed not a part of the Grantor's Parcel or Building for such purposes.

The easements granted by this Section shall remain in existence and shall not expire so long as the building of the Grantee (as originally constructed or any restoration or replacement thereof made during the term of this REA) remains in existence.

#### Section 3.6 Grantor's Removal of Common Foundations

Each of Developer and May covenants that if all or any part of its Building is removed or destroyed, at any time, it will leave in place any foundations, slabs, load bearing walls and party walls (or portions thereof) not destroyed if, immediately before such removal or destruction, such foundations, slabs, load bearing walls or party walls (or portions thereof) were shared jointly between May and Developer. Each of Developer and May shall be obligated to leave these foundations, slabs, load bearing walls and party walls in place only for so long as

63143137

the other Party's Building to which the same are attached (as originally constructed or as replaced under this REA) shall stand or shall be in the process of being replaced.

Nothing in this Section nor in Section 3.5 hereof imposes any obligation on May or Developer to restore or reconstruct all or any part of its Building beyond the termination of any such restoration obligations as are otherwise contained in this REA. In addition, nothing in this Section nor in Section 3.5 hereof prohibits May or Developer from demolishing its Building beyond the time, if any, the Parties are obligated to maintain the same under this REA.

The covenants given under this Section 3.6 shall remain in effect and shall not expire so long as the Grantee's Building (as originally constructed or as replaced under this REA) is in existence.

#### Section 3.7 Self-Help Easements

Each Party hereby grants to the other Party easements in the Common Area of its (Grantor's) Parcel for installation, construction, repairing, maintaining, relocating and removing any and all Separate Utility Facilities and Common Area Improvements, if such installation, construction, repairing, maintaining, relocating or removing is required or permitted under the other provisions of this REA or the Joint Improvement Agreement. Each Grantee of the easements granted under this Section shall indemnify, hold harmless and, at Grantor's election, defend Grantor (with counsel reasonably acceptable to Grantor) from and against all liens, loss, liability, cost or expense (including attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent the same shall have been caused by the Grantor's negligent or wrongful act or omission to act.

691433137

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SEP 19 1973

PP 1973-1974

The duration of the easements granted under this Section shall be coterminous with the respective provisions of the REA which give the Grantee the right or the obligation to perform the work described in this Section.

Section 3.8 [Blank]

Section 3.9 Exterior Light Easements

If and as required pursuant to plans and specifications approved by Grantor, each Party hereby grants to the other Party an easement to install, maintain, repair and replace, at the individual expense (including electricity) of Grantee, lights for the purpose of highlighting the exterior of the Grantee's Building, such lights to be placed on light standards within that portion of the Common Area on Grantor's Parcel contiguous to the Grantee's Parcel and within fifty (50) feet from the face of the Grantee's Building (the exact light standards to be used to be agreed to by Grantor and Grantee), together with an easement of ingress to and egress from such light standards to accomplish such purpose. The position, location, type and character of such lights to be subject to the approval of Grantor. Each Grantee agrees to use due care in the exercise of the rights granted under this Section and to obtain Grantor's consent as to the methods and timing in the exercises of such rights, and further agrees, at Grantee's expense, to promptly repair, replace and restore any and all Improvements of Grantor which have been damaged or destroyed by Grantee in the exercise of the rights granted under this Section and to indemnify, hold harmless and, at Grantor's election, defend Grantor (with counsel reasonably acceptable to Grantor) from all liens, loss, liability, cost or expense (including attorneys' fees) incurred in connection with or arising out of the exercise of such rights, except to the extent the same shall have been caused by the Grantor's negligent or wrongful act or omission to act.

63143137

The easements granted under this Section shall terminate on the Expiration Date of this REA.

## Section 3.10 Abandonment of Easements

After the Expiration Date of this REA, the perpetual easements granted in Section 3.3 and Section 3.4, or all or any part or parts thereof, may be abandoned and terminated, if the use thereof shall have ceased and cessation thereof continues for a continuous period of five (5) years. Thereafter the then record owner of the fee of the Parcel burdened with such easement may give written notice by United States registered mail, postage prepaid, return receipt requested, mailed to the then record owner of the fee of the Parcel benefited by such easement and the then record owner, if any, of any leasehold interest in such benefited Parcel, stating that such easement has been abandoned and may place of record in the Recorder's Office in Cook County, Illinois, within ninety (90) days after the giving of such notice an affidavit that such abandonment has taken place and that such notice has been properly given. If any record owner of the fee of the benefited Parcel fails to place of record in the Recorder's Office in Cook County, Illinois, within ninety (90) days after the giving of such notice an affidavit that such easement has not ceased to be used for such continuous five (5) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Parcel previously burdened shall hold and take such interest free of and unencumbered by such easement.

## Section 3.11 Other Grants of Easement; Dedications

No Party shall make or permit to be made any grant or other conveyance of any easement on its Parcel, to or for the benefit of any Person who is not an Occupant or to or for the benefit of any property outside the Shopping Center Site other than

63143137

(i) for street widening purposes approved by the other Party,  
 (ii) for public or other utilities serving Improvements within  
 the Shopping Center Site, or (iii) an easement imposed as a  
 condition to permitted development of the May Parcel or the  
 Developer Parcel.

Subject to the provisions of Article 2 of the JIA regarding  
 the improvement and dedication of Ramblewood Road and Tower  
 Drive, a Party shall not dedicate any part of its Parcel for  
 public purposes without the consent of the other Party, which  
 consent the other Party may give, condition or withhold in its  
 sole and absolute discretion, except that if such dedication is  
 for purposes of widening streets (and incidental purposes) on  
 the perimeter of the Shopping Center or for utility easements,  
 then the same may be made with the consent of the other Party  
 and such consent shall not be unreasonably withheld. Any pur-  
 ported grant or conveyance made in violation of the provisions  
 of this Section 3.11 shall be absolutely void ab initio unless  
 the grant or a consent thereto by both Parties, executed and  
 acknowledged by both Parties, is placed of record in a single  
 instrument.

## Section 3.12 Easements to Public Utilities

Subject to the provisions of Article 2 of the JIA regarding  
 the improvement and dedication of Ramblewood Road and Tower  
 Drive, no Party shall make or permit to be made any grant or  
 other conveyance of an easement permitted by Section 3.11 to a  
 public utility which shall be inconsistent with the following  
 conditions, covenants and restrictions, and such public utility  
 and its successors shall be deemed bound by such conditions,  
 covenants and restrictions (unless the Parties shall expressly  
 agree otherwise in a recorded instrument):

- (1) The easement is non-exclusive.

(2) All facilities installed pursuant to the easement shall be underground except for manholes and manhole covers which shall be flush with adjacent grade and except as otherwise shown on plans approved by Grantor.

(3) Grantor retains the right to use the surface areas in accordance with this REA.

(4) Grantor reserves the right to require the public utility grantee to relocate its facilities (and vacate the easement) to another location on Grantor's Parcel subject to the conveyance of a similar easement, all at Grantor's cost and expense.

(5) The public utility grantee shall not, in its use and/or installation interfere with other utility installations and easements in the area.

(6) The public utility grantee shall protect its facilities against uses, made by Grantor and others, of the surface.

(7) The public utility grantee shall make adequate provisions for the safety and convenience of all Persons using the area.

(8) The public utility grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

Any purported grant to any public utility which is inconsistent with the foregoing conditions, covenants and restrictions shall be and be deemed to be voidable at any time during the term of this REA, at the election of any Party on written notice given to the other Party at any time during the term of this REA, unless the grant or a consent thereto by both Parties, executed and acknowledged by both Parties, is placed of record in a single instrument.

In addition to the foregoing, the Party granting such a public utility easement shall utilize its best efforts to



impose requirements in the easement that: (i) the public utility grantee, following installation or other work, shall replace and restore the areas and improvements to the condition in which they were prior to performance of such installation and work, and (ii) the public utility grantee shall indemnify, hold harmless and, at Grantor's election, defend Grantor (with counsel reasonably acceptable to Grantor) against all loss and liability (including attorneys' fees) which may result to Grantor from the negligent act or omission of the public utility grantee, its agents, employees, and contractors, except to the extent the same have been caused by the Grantor's negligent or wrongful act or omission to act.

#### Section 3.13 Easements for May's Pylon Sign

Developer hereby grants to May a perpetual, exclusive easement on the Shopping Center Site in the area shown on Exhibit B along Barrington Road as the "Sign Easement Area" for the installation, use, operation, maintenance, repair, replacement, relocation and removal of May's prototype thirty (30) foot tall pylon sign structure containing two (2) twenty (20) foot by ten (10) foot sign panels and related improvements (the design and signing of which shall be determined by May from time to time in its sole discretion), to be erected by May in the Sign Easement Area. May's easement as to the pylon sign and Sign Easement Area is exclusive. The aforesaid pylon sign structure shall be owned by May.

#### Section 3.14 [Blank]

### ARTICLE 4

#### PLANS AND SPECIFICATIONS

##### Section 4.1 General Design Data

In the preparation of all improvement plans for the Center, the general design data, standards and minimum technical

63143137

specifications set forth on Exhibit C hereto shall be followed as minimums, unless applicable governmental specifications establish higher standards in which case the higher standards shall be followed.

Section 4.2 Plans of May

May has provided Developer with architect's renderings of the prototype Building which May intends to construct on the May Parcel, which prototype features the use of pre-cast concrete on exterior walls and a decorative roof band. Developer has indicated that it has no objection to the construction of said prototype. Such renderings (as the same may be amended by May by giving copies of amendments to its renderings to Developer) so prepared by May shall hereinafter be called "May's Preliminary Building Plans." Upon not less than twenty (20) days' written request from Developer, given within ten (10) days after receipt of any amendments to May's Preliminary Building Plans, the Parties shall meet for the purpose of reviewing and discussing May's Preliminary Building Plans and any objections which Developer may have to such May Preliminary Building Plans; provided, however, in any dispute over what is to be contained in May's Preliminary Building Plans, the decision of May shall be final and shall not be subject to arbitration or litigation. Notwithstanding the foregoing, May shall deliver to Developer, on or before February 15, 1989, any and all amendments to May's Preliminary Building Plans.

Section 4.3 Center to be Architecturally Harmonious

Each Party shall cause its Architect to work with the Architect of the other party to the end that the design and exterior of all Buildings will blend harmoniously and attractively so as to provide a unified and integrated shopping center with an architectural appearance of having been planned as a single unit, subject to the provisions of Section 4.2,

providing that May's decision shall be final in respect of its plans for its Building.

Section 4.4 Developer Building Preliminary Plans

Not less than fifteen (15) days prior to the commencement of construction of any Developer Building, Developer shall, at its expense, complete and deliver to May one (1) complete set of plans and three (3) complete sets of prints of Developer Building Preliminary Plans for the review and approval of May, which approval shall be made within fifteen (15) days from the date of submission and as more fully provided below in Section 4.6. Such Developer Building Preliminary Plans shall be developed from and conform to Exhibit B to this REA and shall otherwise be in accordance with the requirements of this REA and shall include, without limitation:

- (1) Design and location plans of sidewalks and curbs along the perimeter of the Developer Building(s).
- (2) Architectural elevations of the Developer Building(s) and related improvements.
- (3) Exterior perspective renderings of the Developer Building(s).
- (4) Landscaping plans for and along the Developer Building(s), showing location and species for all exterior and interior landscaping.
- (5) Proposed specifications, including without limitation, materials and colors, for the exterior and interior of the Developer Building(s).
- (6) Sign designs, and sizes and locations.
- (7) Docks, dock areas and trash compactors for any Developer Building and screening for the same.

69143137

Section 4.5 [Blank]Section 4.6 Approval of Developer Building Preliminary Plans

If May does not disapprove of any aspect of the Developer Building Preliminary Plans pursuant to Section 4.7 within fifteen (15) days from such date of submission, such Developer Building Preliminary Plans shall be deemed to be satisfactory for the development of the Shopping Center Site. If there is such disapproval, Developer will, within fifteen (15) days after receipt of such objection or proposal, appropriately amend and modify said Developer Building Preliminary Plans so as to reflect all changes, modifications and corrections which May is permitted to require hereunder, and upon completion thereof, submit the Developer Building Preliminary Plans, as so amended and modified, to May for its approval, provided that the failure of May to give further notice of disapproval within fifteen (15) days after receipt of said Developer Building Preliminary Plans, as so modified and amended, shall constitute approval thereof by May. Developer shall not thereafter modify or change any approved Developer Building Preliminary Plans without the prior written consent of May.

The approval by May of the Developer Building Preliminary Plans shall not constitute the approval by May of the plans and specifications referred to in Section 3.5 hereof, such plans and specifications to be approved separately from approvals in this Article 4.

Section 4.7 Reasons for Disapproval

After receiving Developer Building Preliminary Plans for review and approval, May shall have the right to disapprove of the same only for one or more of the following reasons

63143137

(provided, however, that May shall have no right to disapprove of any such plans with respect to Developer Building P (as shown on the Site Plan) for occupancy by Phar-Mor Drugs):

(1) The incompatibility of (a) the construction, (b) the design, (c) the construction components, (d) the decorative elements (including landscaping and irrigation systems for landscaping), (e) the material selections, the decor and treatment values, and (f) the general architectural character and the general design with the balance of the Shopping Center.

(2) Such Developer Building Preliminary Plans do not conform to Exhibit F; or

(3) Such Developer Building Preliminary Plans do not comply with the terms of this REA.

Notwithstanding the foregoing, May shall not have the right to review and disapprove of the Developer Building Preliminary Plans for any of the reasons specified in subparagraph

(1) above with respect to: (i) national retailers or franchises, (ii) regional retailers or franchises, or (iii) local retailers or franchises with a significant number of stores or outlets in the Chicago metropolitan area; provided, however, the reasons for disapproval specified in subparagraphs (2) and (3) above shall continue to apply with respect to the retailers or franchises designated in clauses (i), (ii) and (iii) hereof.

#### Section 4.8 Approval of Fire Rating Bureau

All plans for construction by Developer and May shall be subject to review and approval by the fire rating bureau jointly designated by May and Developer. Developer and May shall comply with all requirements of such bureau.

63143137

ARTICLE 5

GENERAL CONSTRUCTION REQUIREMENTS

Section 5.1 "Construction" Defined

As used in this Article the word "construction" includes initial construction under this REA, and except where otherwise specified, subsequent construction, alterations, maintenance, repair, restoration, replacement, rebuilding, demolition and razing carried on in the Shopping Center.

Section 5.2 Construction to Proceed in Reasonable Manner; Coordination of Construction

Each Party shall perform its construction so as not to:

- (1) Cause any unreasonable increase in the cost of construction of the remainder of the Center or any part thereof;
- (2) Unreasonably interfere with any other construction being performed on the Shopping Center Site or Off-Site Easements;
- (3) Unreasonably interfere with other Parties' operations and rights as contemplated by this REA;
- (4) Unreasonably impair the use, occupancy or enjoyment of the Shopping Center Site by an Occupant and/or its Permittees.

Each Party, as respects its respective construction, shall use all reasonable efforts to cause its architects, engineers and contractors to cooperate and coordinate its construction with the architects, engineers, contractors and construction work of the other Party to the extent reasonably practicable, to achieve the objectives set forth in this Section.

Section 5.3 Construction Barricades

If any initial construction hereunder is not substantially completed when the Building of either Party first opens for business to the general public, or, as to any construction other than initial construction, if either Party begins construction after the Building of the other Party has opened for

59143137

business to the general public, then the Party carrying on the construction shall erect adequate, sightly construction barricades at least four (4) feet in height substantially enclosing the area of its construction, and shall maintain these construction barricades in place (to the extent reasonably necessary to remove the hazardous construction conditions, if any, to Permittees).

This Section applies only to construction that can reasonably be deemed to constitute a hazardous condition for Permittees; however, each Party may erect construction barricades, as hereinabove specified, at the time of any construction and maintain the same until the construction so surrounded is secure from unauthorized intrusion.

Section 5.4 Initial Construction, Storage Sites and Time Schedules -- Approval by Parties

Before either Party begins any construction which affects any part of the Common Area it shall submit to the other Party for approval:

(1) A plot plan of the Center showing, as respects the construction in question, its material and equipment storage sites, construction shacks and other temporary improvements and workmen's parking areas; and

(2) A time schedule indicating the approximate dates when each portion of the Center to be used by such Party for the purpose referred to in the preceding subparagraph (1) shall be so used.

The other Party may require reasonable adjustments to the designated locations and/or time schedules contained in the above documents in order to prevent unnecessary conflicts in construction and operations on the Site.

69143137

## Section 5.5 License for Subsequent Construction and Maintenance

From time to time during the term of this REA, each Party shall have a temporary license to use parts of the Common Area on its own Parcel or to the extent reasonably necessary, on the other Party's Parcel, for:

- (1) all "construction" as defined in Section 5.1; and
- (2) maintaining or repairing its Improvements.

(Activities carried on under the preceding subparagraphs (1) or (2) are collectively referred to in this Section 5.5 as "Work").

Within a reasonable time before it begins any Work, a Party shall submit a plot plan to the other Party outlining those portions of the Common Area in which the license is needed. Only if a Party requests a license on portions of Common Area on the other Party's Parcel shall the location as shown on the plot plan and the duration of the license be subject to the approval of that Party, which approval shall be in that Party's sole and absolute discretion, and, in such event, within ten (10) days after its receipt of the plot plan, the Party whose Parcel is affected thereby shall notify the requesting Party whether it approves or disapproves of the same.

When the licensed Party ceases using the Common Area in question, it must promptly restore such area to the condition in which it existed before the commencement of the Work. This restoration shall include clearing the area of all loose dirt, debris, equipment and construction materials and the repair or replacement of paving, striping and landscaping as required.

The licensed Party must also restore any other portions of the Center that may be damaged by its Work promptly upon the occurrence of such damage. In addition, the licensed Party must at all times during the period of its Work keep all

63143137



portions of the Center (except for the under-construction improvements and the portions of the Common Area being used under this Section) free from any loose dirt, debris, equipment or construction materials relating to the Work.

This Section 5.5 shall not in any way limit the right of any Party to enter upon or use the Common Area of the other Party if specifically provided for in any other Section of this REA.

Section 5.6 Safety Matters; Indemnification

Each Party shall:

(1) Take all safety measures reasonably required to protect the other Party and all Permittees and the property of each from injury or damage caused by or resulting from the performance of its respective construction;

(2) Indemnify, hold harmless, and (at the election of the other Party) defend the other Party and all Permittees (with counsel reasonably acceptable to the other Party) from any and all claims, costs, loss, expenses and liabilities (including attorneys' fees) arising from the death of or accident, injury, loss or damage whatsoever caused to any natural person or to the property of any Person arising out of, or in connection with, or as a result of such construction (the foregoing indemnification does not apply to the extent that the death, accident, injury, loss or damage is caused by the negligence, wrongful act or omission or fault of the indemnitee or its contractors); and

(3) Indemnify, hold harmless, and (at the election of the other Party) defend the other Party (with counsel reasonably acceptable to the other Party) from and against all mechanics', materialmen's and laborers' liens and all cost, loss, expenses and liabilities (including attorneys' fees) arising from its respective construction.

63143137

Section 5.7 Evidence of Party's Compliance  
With Construction Requirements

After a Party has completed any construction, it shall, upon request of the other Party, deliver to the other Party evidence that the construction has been completed in compliance with all applicable laws, ordinances, rules and regulations. A Certificate of Occupancy (or the equivalent thereof) issued by the governmental body having jurisdiction thereof shall be deemed satisfactory evidence of compliance with laws, ordinances, rules and regulations.

Section 5.8 Liens

Subject to the provisions of the Joint Improvement Agreement, each Party agrees that in the event any mechanic's lien or other statutory lien shall be filed during the term of this REA against a Party's Parcel by reason of work, labor, services, or materials supplied to or at the request of it pursuant to any construction on its Parcel, or supplied to or at the request of an Occupant of its Parcel pursuant to any construction by said Occupant, it shall pay and discharge, or cause to be paid and discharged, the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Each Party shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnify, and defend as hereinafter provided, and be prosecuting such contest in good faith, the requirements that it pay and discharge, or cause to be paid and discharged, such liens within said thirty (30) day period shall not be applicable; PROVIDED, HOWEVER, that in all events such Party shall within thirty (30) days after the filing thereof bond or indemnify against such liens in amount and form satisfactory to induce the title insurance company which

63143137

insured title to the respective Parcel of each of the Parties hereto to insure over such liens in a manner which provides the other Party with title insurance coverage equal to or in excess of the amount of such liens, and shall indemnify, save harmless and, at the election of the other Party defend (with counsel acceptable to the other Party) the other Party from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be had as of right) adversely to the Party contesting such liens, such Party shall within ten (10) days thereafter cause the lien(s) (including any resulting judgment lien) to be discharged of record prior to any foreclosure.

## Section 5.9 Workmanship, Compliance with Laws and Insurance Requirements

Each Party which performs work under this REA agrees to perform such work and to construct the Buildings and Improvements constructed by it in a diligent, good and workman-like manner with the use of first class materials, and in accordance with (1) all applicable building and zoning laws and all other laws, ordinances, orders, codes, rules, regulations and requirements of all federal, state, municipal, public and governmental agencies and governments, (2) orders, rules and regulations of the National Board of Fire Underwriters or any other body now or hereafter constituted performing similar functions in Cook County, Illinois, and (3) all regulations, tariffs, and other requirements and specifications of all regulated public utility companies providing utility services to the Center or to such Party's portion thereof.

63143137

## ARTICLE 6

### CONSTRUCTION BY DEVELOPER

#### Section 6.1 Joint Improvement Agreement

The Parties have entered into a Joint Improvement Agreement, dated as of even date herewith covering the Common Improvement Work and Common Area Improvements, which Joint Improvement Agreement is hereby incorporated herein by this reference the same as if it were fully set forth herein; provided that in the event of any inconsistency between the provisions of this REA and the provisions of the JIA, the JIA shall control.

Developer shall complete all Common Improvement Work necessary to facilitate construction of the May Building (including without limitation the construction road, the Construction Staging Area, other staging areas and the pad for the May Building) no later than April 3, 1989. The Common Improvement Work related to the construction of utilities, roadways, parking areas, and sidewalks shall be substantially completed ten (10) weeks prior to the opening of the May Building pursuant to Section 7.2 of this REA, and the Common Improvement Work for the balance of the Center (including, without limitation, the traffic signal at Barrington Road and Tower Drive, the traffic signal at Barrington Road and Ramblewood Road, and on and off-site storm water facilities), and the site work for the Hanover Park Parcel shown on Exhibit B (with the exception of the outlot parcels and the parking areas related specifically to the outlot parcels on the Hanover Park Parcel, the "Excluded Areas" shown on Exhibit B), shall be substantially completed prior to the opening of the May Building pursuant to Section 7.2 of this REA; provided, however, that the aforesaid obligation to substantially complete the signalization at Barrington Road and Ramblewood Road shall be limited to best efforts to meet the

69143137

aforesaid schedule or to substantially complete the same as soon as possible thereafter. After the opening of the May Building and prior to the completion of the site work for the "Excluded Areas," Developer shall improve and maintain such areas so as to be sightly and compatible with adjacent landscaping and/or Parking Area. Developer shall obtain all necessary permits and approvals for the work described in the first two sentences of this paragraph prior to April 3, 1989, subject to delays beyond Developer's control which do not pertain to Developer's financing.

#### Section 6.2 Developer's Construction Duty

Developer agrees to commence and diligently pursue to completion the construction of Developer Buildings containing at least 40,000 square feet of Floor Area, in addition to Developer Building P (as shown on the Site Plan) containing at least 50,000 square feet of Floor Area for occupancy by Pharmor Drugs (all collectively referred to as the "Phase 2 Initial Developer Buildings") after the approval by May of the Developer Building Final Plans as hereinabove provided in respect of the Phase 2 Initial Developer Buildings. Developer also agrees to commence and diligently pursue to completion the construction of buildings on the Hanover Park Parcel containing at least 20,000 square feet of Floor Area, in addition to Developer Building K (as shown on the Site Plan) containing at approximately 60,000 square feet of Floor Area for occupancy by Cub Foods (all collectively referred to as the "Phase 1 Initial Developer Buildings"). Developer shall commence construction sufficiently early to complete the same by the date set forth below in Section 6.3, and once said construction is commenced, shall diligently pursue the same to completion.

#### Section 6.3 Developer's Completion Duty

(1) Developer (a) shall provide May its building pad, the

63143137

Construction Staging Area, other staging areas and the construction road in compliance with the Joint Improvement Agreement on or before April 3, 1989; (b) shall substantially complete all Common Improvement Work and Common Area Improvements prior to the opening of the May Building pursuant to the requirements of the JIA and Section 6.1, above; and (c) shall fully complete the Phase 1 Initial Developer Buildings and the Phase 2 Initial Developer Buildings on or before the opening of the May Building.

(2) In the event May reasonably anticipates that Developer will not complete the Common Improvement Work or Common Area Improvements and the site work construction obligations relating to May's building pad, staging areas or construction road by the date provided for in Sections 6.1 and 6.3, or in the event May reasonably anticipates that Developer will not complete the balance of its site work construction obligations by the date provided for in Sections 6.1 and 6.3, upon ten (10) days' notice to Developer and provided Developer does not then commence and diligently pursue its construction obligations, and subject to unavoidable delays, May may take any measures necessary to complete the Common Improvement Work, Common Area Improvements or site work in question itself, subject to reimbursement from Developer, or offset against any of May's future payments to Developer (including, without limitation, May's contribution toward the Total Expenditure described in Section 2.1 of the Supplemental Agreement and May's payment of its Allocable Share pursuant to Section 3.2 of the Supplemental Agreement), for actual costs incurred by May. In the event May exercises the aforesaid right, and otherwise complies with the provisions of the Supplemental Agreement, Developer shall provide May with the letter of credit described in Section 2.7 of the Supplemental Agreement upon completion of the Common Improvement Work.

63143137

Section 6.4 "Commence Construction" Defined

The term "commence construction", or words to like effect, as used in Articles 6 and 7 shall mean the commencement of actual physical work on the foundations at the building site in the case of a Building, or commencement of actual physical work on the Common Improvement Work in the case of the Common Improvement Work.

ARTICLE 7

CONSTRUCTION OF MAIN BUILDING BY MAY

Section 7.1 May's Construction Duty

Unless Developer is in default hereunder, May shall commence and diligently prosecute the construction of its Building no later than thirty (30) days after the occurrence of all of the following:

(1) Plans for the Common Improvement Work and Common Area Improvements have been approved by May pursuant to the Joint Improvement Agreement and the Center has been graded sufficiently to permit commencement of such construction and the Permissible Building Area of May has been prepared for construction in accordance with the Joint Improvement Agreement;

(2) Developer Building Preliminary Plans for the strip portion of the Center have been approved by May;

(3) Developer has arranged bond proceeds and secured financing for construction of Common Improvement Work and Developer Improvements and a mortgage evidencing a portion of such financing has been placed of record in favor of an institutional lender of sufficient assets to provide such financing;

(4) The temporary utilities, construction roads, the Construction Staging Area and other staging areas referred to in Exhibit C have been installed in accordance with the Joint Improvement Agreement;

(5) Necessary construction easements which May is entitled to have approved and which have been requested by May in a timely manner shall have been approved as provided for in Section 3.5;

(6) The representations and warranties of Developer set forth in Section 25.27 and in the Purchase and Sale Agreement of even date herewith by which May purchased the May Parcel from Developer (the "Purchase and Sale Agreement") shall be true as of the date May is to commence construction;

(7) Developer shall have obtained all governmental approvals, permits, licenses, certificates and authorizations pertaining to the construction of (i) the Phase 1 Initial Developer Buildings and the foundations of the Phase 2 Initial Developer Buildings in accordance with this REA, and (ii) the Common Improvement Work and Common Area Improvements and site work for the Hanover Park Parcel in accordance with the Joint Improvement Agreement, and shall have commenced and be continuing with construction of the same;

(8) May shall have succeeded in obtaining a building permit for the purpose of satisfying its construction obligation pursuant to this Article 7, provided, however, that this Section 7.1(8) shall serve as a condition precedent to May's construction duty under this Article 7 only on the condition that May utilizes its best efforts to prepare and submit to the Village of Streamwood, on or before February 15, 1989, a customary building permit application for the construction of a building similar to the structure erected by May in South Bend, Indiana;

(9) Developer shall have obtained the following approvals, permits, licenses, certificates and authorizations from all necessary governmental entities having jurisdiction thereof:

(A) subdivision of the May Parcel from the Developer Parcel;

63143137



(B) rezoning of the Shopping Center to a zoning classification which authorizes the use of the same as a shopping center, department store and parking facilities, including without limitation, special use permit approval for the development of a shopping center, and preliminary and final site plan approval which authorizes the development of the Shopping Center in accordance with the JIA, the Supplemental Agreement, this REA and the Site Plan attached hereto as Exhibit B and featuring the amount of parking provided on Exhibit B;

(C) Approvals required for May to locate, construct and maintain May's exclusive pylon sign featuring "Venture" sign panels upon the Sign Easement Area, as provided in this REA; and

(D) "wetlands" development approvals or waivers, deemed necessary by May.

none of which shall be subject to revocation or appeal or to conditions objectionable to May (herein called the "Required Approvals"); and

(10) Developer shall have: (a) notified May, no earlier than March 1, 1989, of tender to May of a construction-ready pad for the May Building; and (b) delivered to May, no earlier than March 1, 1989, a certification from an Illinois registered professional engineer or land surveyor reasonably acceptable to May (the "Pad Certification"), which: (i) establishes the grades, elevation, and compaction of the construction-ready pad for the May Building; and (ii) states that the aforesaid pad is in full compliance with the Minimum Technical Specifications attached hereto as Exhibit C. May shall have the right to inspect and accept the May Building pad within ten (10) days after its receipt of the Pad Certification. If May does not disapprove of any aspect of the May Building pad pursuant to

63143137

the Minimum Technical Specifications within the aforesaid (10) day period, then the pad shall be deemed to be satisfactory to May and May shall be deemed to have approved and accepted the pad. If May disapproves of any aspect of the May Building pad because it does not comply with the Minimum Technical Specifications within ten (10) days after its receipt of the Pad Certification, then Developer will, within fifteen (15) days after receipt of such objection, appropriately modify the pad so as to correct such defects and upon completion thereof, tender the May Building pad, as so modified, to May for its approval by written notice to May, provided that the failure of May to give further notice of disapproval within ten (10) days after the effective date of tender of the May Building pad, as so modified, shall constitute the approval and acceptance thereof by May.

## Section 7.2 May's Completion and Opening Duty

Subject to the conditions and limitations set forth in this REA, and subject to:

- (1) Satisfaction of the conditions set forth in Section 7.1, above on or before April 3, 1989;
- (2) Developer's delivery of a construction-ready pad for the May Building to May on or before April 3, 1989;
- (3) Developer's completion of its responsibilities pursuant to Section 6.3(1)(b) above, on or before the opening of the May Building;
- (4) [Blank]
- (5) Developer's completion of construction and diligent efforts to lease on the Hanover Park Parcel at least 20,000 square feet of Floor Area in Phase 1 Initial Developer Buildings, in addition to Developer Building K (as shown on the Site Plan) containing at approximately 60,000 square feet of Floor Area for occupancy by Cub Foods, on or before the opening of the May Building;

(6) Cub Foods' actual occupancy and being open for business in Developer Building K (as shown on the Site Plan), on or before the opening of the May Building;

(7) Developer's completion of construction and diligent efforts to lease at least 40,000 square feet of Floor Area in Phase 2 Initial Developer Buildings, in addition to Developer Building P (as shown on the Site Plan) containing at least 50,000 square feet of Floor Area for occupancy by Phar-Mor Drugs, on or before the opening of the May Building.

May shall diligently prosecute the construction of its Building and complete construction thereof and open a Venture Store for business in its Building not later than November 24, 1989, subject to unavoidable delays which do not relate to May's financing; PROVIDED, HOWEVER, that May shall not be required to prosecute or complete construction or open for business if it appears, in the exercise of May's reasonable judgment, that the construction required of Developer under Article 6 will not be completed by the dates required therein; and PROVIDED, FURTHER, that May's required completion date and opening shall be extended by the time of delay in satisfying conditions (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 7.1; and PROVIDED, FURTHER, that nothing shall be deemed to preclude May from completing construction early or opening early, but May's early initiation or completion of construction or early opening shall not waive Developer's obligations under this REA.

May's commitment herein to open its Building for business as a Venture Store is a commitment only as to an initial opening and is not intended to and shall not be implied to impose any obligation on May to operate its Building for any purpose, or under any name, or to make any use of its Building except for its initial opening, for the first business day, as a

69143137

Venture Store. For the purposes of this REA, "Venture Store" shall mean "Venture" or whatever name is utilized by the majority of the now existing Venture Stores in the greater Chicago metropolitan area.

Section 7.3 Limitation on Opening Time

In the event that May's November 24, 1989 required completion date and opening shall be extended by the delay of Developer in satisfying conditions (1), (2), (3), (4), (5), (6) and (7) of Section 7.1, it is mutually agreed that May shall only be required to open its Building during March, April, October or November, but not within thirty (30) days prior to Easter. In the event May's required opening date, as the same may be extended as herein provided, shall not fall within any of said periods, then May's required opening date shall be extended to the next month in which May is required to open under this Section, provided such date is not a Saturday, Sunday or a legal holiday.

ARTICLE 8

FURTHER REQUIREMENTS RELATING  
TO CONSTRUCTION

Section 8.1 Developer Improvements

Developer covenants and agrees at its expense to design and construct the Phase 1 Initial Developer Buildings and the Phase 2 Initial Developer Buildings within the Developer Permissible Building Areas in the position on such Areas shown on Exhibit B. Developer agrees to perform the Common Improvement Work as provided in the Joint Improvement Agreement.

All construction by Developer shall be in accordance with approved Developer Building Final Plans, or other applicable approved "Final Plans" as provided for in the Joint Improvement Agreement and elsewhere in the REA. Any dumpster or trash receptacle areas located on the outlots along Barrington Road

within the Shopping Center shall be screened by an enclosure of six (6) feet in height or such other height approved by May.

The heights of the Developer Buildings shall not exceed those specified in Exhibit D.

Developer shall have the right to build any additional Building(s), or expand its Building(s) at any time by adding from time to time, at its option, additional square feet of Floor Area within its Permissible Building Areas as shown on Exhibit B, so long as:

- (i) Developer maintains the parking ratio required in this REA, with respect to the total Shopping Center Site;
- (ii) the aggregate Floor Area of Developer's Building(s) within the Developer Permissible Building Areas does not exceed the maximum limitation shown on Exhibit B;
- (iii) such Buildings do not exceed the respective height limitations for the same as specified in Exhibit D;
- (iv) Developer obtains approval of its plans therefor as provided in Article 4; and
- (v) Developer observes and complies with all other applicable provisions of this REA in respect of such construction.

**Section 8.2 May's Improvements**

Subject to the conditions and limitations set forth in this REA, May covenants and agrees to construct the May Building, which shall contain on one level at least seventy-eight thousand (78,000) square feet and not more than eighty-five thousand (85,000) square feet of Floor Area with all of the May Building constructed within May's Permissible Building Area.

The height of the May Building shall not exceed that specified in Exhibit D for the May Buildings.

May shall have the right to build any additional Building(s) or expand its Building(s) at any time by adding,

from time to time, at its option, additional square feet of Floor Area within its Permissible Building Area, so long as:

- (i) May maintains the parking ratio required in this REA in respect of the May Parcel;
- (ii) the aggregate Floor Area of May's Building(s) within the May Permissible Building Area does not exceed eighty-five thousand (85,000) square feet;
- (iii) such Buildings do not exceed the respective height limitations for the same as specified in Exhibit D; and
- (iv) May observes and complies with all other applicable provisions of this REA in respect of such construction, including compliance with all municipal development requirements applicable thereto.

Nothing contained in this Section or elsewhere in this REA shall impose any obligation on May to operate or make any use of its Building(s), except for May's obligation relating to opening under Sections 7.2 and 7.3.

## Section 8.3 Building Sites Common Area Until Construction Commenced

On or before the opening of the May Building, any portion of any Permissible Building Area upon which Building construction has not commenced shall be improved by the Party as to that Parcel so as to be sightly and compatible with adjacent landscaping and/or Parking Area, and shall be part of the Common Area until such time as Building construction commences thereon.

## ARTICLE 9

### MAINTENANCE, REPAIR, ALTERATIONS AND RESTORATION - GENERAL

#### Section 9.1 Maintenance of Improvements on Each Parcel

Subject to the provisions of Sections 9.2, 9.3 and 9.6 and other applicable provisions of this REA, each Party shall

maintain at its sole cost and expense its Buildings, in good order, condition and repair, ordinary wear and tear and damage by fire or other casualty excepted.

## Section 9.2 Damage or Destruction of Developer Building

If (1) all or any part of the Developer Building(s) is damaged or destroyed at any time when the May Building is open for business (subject to temporary cessations of business for repairs, remodeling or restoration by May due to condemnation, casualty or force majeure) and such business consists of retail and/or service and/or commercial, and/or, in not more than 25% of the Floor Area in the May Building, general office uses (but office uses which are an integral part of the retail, service or commercial uses occupying the May Building shall not be included in calculating the 25% limitation), and (2) such damage or destruction is attributable to fire or any other cause whatsoever, the Developer shall promptly commence reconstruction of the Developer Building(s) and shall diligently prosecute such reconstruction to completion. Notwithstanding the foregoing, in the event all or any part of the May Building is also damaged or destroyed due to fire or any other cause whatsoever, then Developer shall have the right to request, and May shall so notify Developer, as to whether May intends to commence reconstruction of the May Building.

The Developer Building(s) as reconstructed shall contain not less than 80,000 feet of Floor Area on the Hanover Park Parcel and 90,000 square feet of Floor Area on the Shopping Center Site, which Floor Area shall be situated within the Developer's Permissible Building Areas designated on Exhibit B, subject to any applicable changes in any then existing zoning ordinances of governmental authorities having jurisdiction thereof.

S3143437

The Developer shall comply with the provisions of Article 4 in connection with any such reconstruction and the Plans required to be prepared by Developer thereunder shall be reviewed and approved as provided in Article 4.

Section 9.3 [Blank]

Section 9.4 [Blank]

Section 9.5 Duty to Complete Rebuilding

Developer agrees that any Building or other Improvement which it is required to rebuild, replace or repair pursuant to Article 9 shall be commenced promptly and completed with due diligence and in all events ready for occupancy within fifteen (15) months after such damage or destruction occurs and further agrees that prior to commencing such rebuilding, replacement or repair, it shall comply with the requirements herein set forth with respect to initial construction.

Section 9.6 Clearing Debris from Razed Improvements

If a Party is not obligated hereunder to rebuild, replace or repair a Building on its Parcel that has been damaged or destroyed, and if such Party elects not to do so, then it shall with reasonable dispatch raze such Building (or such part thereof that has been damaged or destroyed and the remainder shall be restored to a unified architectural whole) and clear the area of all debris. After any ground area has been cleared, it shall automatically become a part of the Common Area and landscaped or converted into Parking Area and shall be so improved by the Party performing the razing so as to be compatible with adjacent landscaping and/or Parking Area until such time as rebuilding may occur thereon. All activities that are performed by the Party razing the improvements and constructing the landscaping or Parking Area shall be at such Party's sole cost and expense.

S3143177



Section 9.7 Miscellaneous Repairs and Alterations

Subject to the preceding Sections of this Article and the other provisions of this REA, each Party, at any time and from time to time, may make such repairs, alterations, reconstructions or additions to its Improvements as it deems necessary or advisable under the circumstances.

ARTICLE 10

OPERATION, MAINTENANCE, REPAIR  
AND RESTORATION -- COMMON AREA

Section 10.1 Maintenance of Common Area

From and after the date either Party opens its Building for business, Developer shall operate, light, maintain, repair and replace the Common Area and Common Area Improvements on each Party's Parcel (except to the extent May's Parcel is being maintained pursuant to Section 10.8) in good order, condition and repair, and May shall pay such share of the cost of the same as may be required by the Supplemental Agreement. In the event of any inconsistency between the provisions of the Supplemental Agreement and this REA, the provisions of the Supplemental Agreement shall control.

Section 10.2 [Blank]

Section 10.3 General Operation and Maintenance Standards

Without limiting the generality of anything set forth in this Article, Developer, in fulfilling its obligations under Section 10.1, shall keep the Common Area and Common Area Improvements in good order, condition and repair in accordance with practices prevailing in first class shopping centers, and, to that end, shall perform and observe, without limitation, the following services and standards:

(1) Inspect, maintain, repair and replace the surface of the Perimeter Sidewalks and other sidewalks, Parking Areas, asphalt paving, and curbs keeping them level, smooth and evenly

covered with the type of surface material originally installed thereon or such substitute therefor as shall be in all respects equal in quality, appearance and durability;

(2) Promptly remove all papers, debris, filth, refuse, surface waters, snow and ice from the Center and wash or thoroughly sweep paved areas;

(3) Maintain, replace and repair all Parking Area entrances, exit and directional signs, markers and lights;

(4) Clean Parking Area lighting fixtures of the Center and relamp and ballast as needed;

(5) Maintain, rewire and replace and otherwise keep in good operating condition all Common Area lighting fixtures and related appurtenances and electrical systems;

(6) Keep all Common Area lighted as required by Section 10.6;

(7) Maintain, repair and replace or repaint striping and markers, as necessary as the same become unserviceable or become unsightly or indistinct;

(8) Maintain, repair and replace landscaping as necessary to keep the same in a first-class and thriving condition;

(9) Clean, maintain and repair signs of the Center (as contrasted with those of Occupants), including relamping and repairs being made as required;

(10) Maintain, inspect and keep in a clean and sanitary condition all common use facilities;

(11) Furnish necessary mosquito and other pest abatement controls;

(12) Clean, repair, maintain and replace all Common Utility Facilities, to the extent that the same are not cleaned, repaired, maintained or replaced by public utilities;

(13) Provide traffic and security personnel if, and only if, circumstances so dictate;

(14) Insure the Common Area Improvements against damage occasioned by fire or other casualty covered from time to time by a standard "all risk" insurance policy;

(15) Faithfully observe and perform all of said operation, maintenance and repair in accordance with the rules, regulations and maintenance standards set forth in Exhibit E;

(16) Faithfully observe and perform all of the obligations imposed upon the servient tenement (regardless of whether the servient tenement in question is the May Parcel or the Developer Parcel) pursuant to the On-Site Third Party Easements;

(17) Faithfully observe and perform any obligations imposed upon the dominant tenement (regardless of whether the dominant tenement is the May Parcel or the Developer Parcel or the Pipeline Property) pursuant to the Off-Site Easements;

(18) Maintain, repair and replace the pylon sign structure and appurtenant utility service and facilities included in the Common Area pursuant to Section 1.3(2)(f), above (but only if May is represented on such pylon sign structure pursuant to the terms of the JIA and provided that each Party shall be responsible for installing, maintaining, repairing and replacing its own sign panels).

#### Section 10.4 Indemnification of Parties

Each Party (Acting Party) shall indemnify, hold harmless and, at the election of the other Party, defend the other Party and its Parcel (with counsel reasonably acceptable to the other Party) from all mechanic's, materialmen's and laborers' liens, and all costs, expenses and liabilities in connection therewith (including attorneys' fees) arising out of any activities performed by or on behalf of the Acting Party under this Article (whether performed before or after the signing of this REA).

If either Parcel becomes subject to any above-described lien, the Acting Party shall pay and discharge the same of

record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. The Acting Party shall have the right to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, and so long as it shall furnish bond or indemnity, and defend as hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens within said thirty (30) day period shall not be applicable; PROVIDED, HOWEVER, that in all events the Acting Party shall within thirty (30) days after the filing thereof, post such bond or other security against such liens in amount and form satisfactory to induce a title insurance company to insure over said liens, and shall defend, indemnify and save harmless the other Party from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees) resulting from the assertion of any such lien. In the event such legal proceedings shall be finally concluded (so that no further appeal may be had as of right) adversely to the Acting Party, such Acting Party shall within ten (10) days thereafter cause the lien(s) (including any resulting judgment lien) to be discharged of record.

Section 10.5 Indemnification for Non-Performance

Each Party responsible for maintenance and repair of any Common Area shall, so long as it shall be responsible for such maintenance and repair under the provisions of this REA, indemnify and hold the other Party harmless and, at the other Party's election, defend the other Party (with counsel reasonably acceptable to the other Party) from and against all damage, loss, liability, cost or expense (including attorneys' fees) resulting from the failure by the Party currently responsible therefor under this REA to maintain and repair the portion(s) of the Common Area for which it is currently

63143137

responsible, except to the extent the same shall have been caused by the wrongful or negligent omission or act of the other Party.

Section 10.6 Illumination of Common Area

During any period when May's Building or any portion thereof is open for business and for at least one-half (1/2) hour after such business hours or for such longer period as is necessary to permit safe egress from the Center by Permittees, all Common Area shall be kept lighted and opened to the public, but in no event shall a Party be obligated to light such Common Area later than 10:30 P.M., except as hereinafter provided. Notwithstanding the foregoing limitation, there shall be kept lighted for security purposes seven (7) days each week during the hours of darkness such lights, if any, as are necessary to provide safety throughout the Common Area. If a Party requires lighting other than as above required the same shall be provided at such Party's cost and not as part of Common Area maintenance cost.

Section 10.7 Failure of Performance

If a Party fails to perform any of its duties or obligations provided in this Article 10, the other Party may at any time give a written notice to the Party thus failing, setting forth the specific failures to comply with Article 10; if such failures are not corrected within thirty (30) days after receipt of such notice, or if such failures are such that they cannot be corrected within such time then if the Party receiving such notice fails to commence the correction of such failures within such period and diligently prosecute the same thereafter, then, in either such event, the Party giving such notice shall have the right to correct such failures, including the right to enter upon any Parcel to correct such failures, and the Party receiving such notice shall pay the costs

63143137

thereof. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting Party or collection may be sought otherwise and in any event the defaulting Party shall pay such amount with interest in accordance with Section 25.7; provided, however, these provisions shall be without prejudice to the Party receiving such notice to contest the right of the other Party to make such repairs or expend such monies and to withhold such amounts. Notwithstanding anything hereinabove contained to the contrary, (1) in the event of an emergency situation, a Party may without the notice required by this Section 10.7, but with such notice as is practical under the circumstances, cure any such default and, thereafter, shall be entitled to the benefits of this Section 10.7 and (2) no Party shall have the right, whether under this Section or otherwise, to enter upon the Floor Area of any other Party to make any repairs or perform any maintenance or for any other purpose.

Section 10.8 Right of May to Maintain Its Parcel

At any time, or from time to time, after opening for business, May, by notice given to Developer not less than sixty (60) days before the date May intends to withdraw its Parcel from maintenance by Developer, may withdraw its Parcel from the maintenance and operation provisions herein prescribed for Developer, such withdrawal to be effective on a date selected by May in said notice after the end of said sixty (60) day period. May shall have the option to except Common Area lighting from its withdrawal, so that the Developer's obligations set forth in Sections 10.3(6) and 10.6 continue and remain in full force and effect. After such withdrawal is effective, May shall not be required to pay any Common Area Maintenance Costs or estimates thereof; except for its share of lighting costs incurred by Developer in continuing to perform its obligations under Sections 10.3(6) and 10.6 if May has elected to except such obligations from its withdrawal.

631431.37

If May withdraws its Parcel under this Section, May shall, at its sole cost and expense, perform all of the functions of the Developer with respect to the Common Area and Common Area Improvements on the May Parcel, including those functions set out in Section 10.3 in the manner specified in Section 10.1, except for lighting obligations under Sections 10.3(6) and 10.6. If May has elected under Section 10.8 to except such obligation from its withdrawal.

**Section 10.9 Request to Have Parcel Maintained by Developer**

If May has withdrawn the Common Area and Common Area Improvements on its Parcel from the maintenance and operation of Developer, it may, upon sixty (60) days' notice to Developer, request to have its Parcel again so maintained and operated by Developer pursuant to Section 10.1. Such request shall be honored by Developer and Developer shall resume maintenance and operation of said Common Area and Common Area Improvements within sixty (60) days after said request.

**Section 10.10 Damage to or Destruction of Common Area Improvements**

If any Common Area Improvements are damaged or destroyed by casualty, such Common Area Improvements shall be promptly rebuilt and replaced and repaired by Developer to the same (or better) condition and to the same (or better) general appearance as existed immediately prior to such damage or destruction. Any Common Area Improvements which are required to be rebuilt, replaced or repaired shall be promptly restored by Developer and in all events completed within six (6) months after such damage or destruction occurs, and Developer shall, prior to commencing such rebuilding, replacement or repair, comply with the requirements herein set forth with respect to initial construction and in the Joint Improvement Agreement. If Developer is obligated to perform such rebuilding,

63143137

replacement or repair on the May parcel pursuant to this Section, and May has received insurance proceeds as a result of the damage or destruction at issue, May shall, at its option, either (a) make available to Developer whatever portion of the proceeds is required for Developer to fulfill its rebuilding, replacement or repair obligations as to the May Parcel, or (b) use the portion of the proceeds required to rebuild, replace or repair the May Parcel to the extent Developer would otherwise be so required under this Section.

Section 10.11 [Blank]

#### ARTICLE 11

##### PARKING REQUIREMENTS

##### Section 11.1 Required Parking Ratio

The required parking for the Shopping Center, including the May Parcel, the Developer Parcel and the Pipeline Property, shall at all times be at least 4.4 ground level automobile parking spaces for every 1,000 square feet of Floor Area in the Shopping Center or such greater number as shall then be required under applicable law.

Each parking space, parking lane, and parking bay (which includes two rows of parking spaces and an incidental driveway) shall conform to the parking module and specifications shown on Exhibit B.

Developer covenants to May that it will not permit or cause any action to be taken which would reduce the aforesaid parking ratio for the Shopping Center (including the May Parcel, the Developer Parcel and the Pipeline Property) below 4.4 ground level automobile parking spaces for every 1,000 square feet of Floor Area in the Shopping Center (or below such greater number as shall then be required under applicable law).

63143137



## Section 11.2 Charges for Parking; Employee Parking Area

No charge of any type shall be made to or collected from any Occupants or Permittees for the right to park vehicles in the Parking Area, except such charges as may be provided to be paid in any separate agreement with any such Occupant. The Permittees of any Party shall not be prevented from so parking so long as (1) space is available in the Parking Area and (2) they do not violate the rules covering the use of the Parking Area promulgated from time to time by the Parties and (3) it is not necessary to prevent such parking in order to prevent a dedication of or any accrual of any rights to the public in the Parking Area.

The Parties shall jointly designate certain sections within the Common Area (or on land outside the Common Area within a reasonable distance from the nearest boundary of the Center) for parking use by the Occupants and their employees, agents, contractors, licensees and concessionaires. In the event the Parties cannot agree or one Party withdraws from such joint designation, each Party shall designate certain sections within the Parking Area on its Parcel for parking use by its Occupants and their employees, agents, contractors, licensees and concessionaires. Each Party shall require its employees and the employees of its tenants and subtenants, contractors, licensees and concessionaires to use only the designated parking sections.

## Section 11.3 Use of Parking Area

Except as otherwise expressly provided herein, no Party shall use or permit the use of the Parking Area on its Parcel for any purpose other than pedestrian movement and the parking and passage of motor vehicles by Occupants and Permittees.

63143137

## ARTICLE 12

### OPERATING COVENANTS OF DEVELOPER

#### Section 12.1 General Operating Covenants

In addition to and not in limitation of any other covenants of Developer contained in this REA, Developer covenants and agrees that it will operate or cause to be operated the Developer Improvements in the following manner:

- (1) To open and operate the Developer Building(s) in accordance with the requirements of this REA;
- (2) To continuously manage, use and operate the Developer Buildings (or cause the Buildings to be continuously managed, used and operated) as a complex of retail stores and commercial and service enterprises that are a part of a shopping center;
- (3) To maintain a high quality of management and operation but in all events not less than that generally adhered to at other first-class community shopping centers in the Chicago metropolitan area;
- (4) To use its best efforts to have all the Floor Area of the Developer Building(s) leased and occupied in their entirety;
- (5) To use its best efforts to have all Floor Area of the Developer Buildings utilized to the maximum extent possible and to have a balanced and diversified grouping of retail stores, merchandise and services;
- (6) To manage, operate and maintain the Common Area in accordance with Article 10 and to operate in accordance with and observe and comply with the Rules and Regulations attached hereto as Exhibit E;
- (7) To maintain the layout of its Parcel as set forth on Exhibit B, and in this regard to operate within the confines of its Parcel and not withdraw any real property from the Developer Parcel nor add any property to the Shopping Center Site;

63143137

(8) To maintain and not change, modify or alter the exterior of Developer's Buildings except as specifically permitted elsewhere in this REA;

(9) To manage and operate the Developer Improvements under the name "Westview Shopping Center" and under no other name without the prior approval of May;

(10) To comply with the Sign Criteria of Exhibit F hereto.

(11) To use its best efforts to enforce those provisions of Developer's leases with Occupants to the extent necessary to enable Developer to fulfill its obligations under this REA, including, without limitation, Developer's obligations under this Section 12.1.

The covenants in this Section 12.1 are made subject to any interruptions due to repair, alteration, remodeling or reconstruction of the Developer Improvements (if specifically authorized herein) and shall be effective during such times, from time to time, and as to all of the Developer Buildings referred to in Section 12.1(1), for so long as all or any portion of the May Building is open for business (subject to temporary cessations of business for repairs, remodeling or restoration by May due to condemnation, casualty or force majeure) and such business consists of retail and/or service and/or commercial, and/or, in not more than 25% of the Floor Area in the May Building, general office uses (but office uses which are an integral part of the retail, service or commercial uses occupying the May Building shall not be included in calculating the 25% limitation), until the Expiration Date. The limitation in this Section 12.1 on the duration of the Developer covenants shall not limit the duration of any such covenants if the same or similar covenants are contained elsewhere in this REA.

Notwithstanding anything to the contrary, the covenants in this Section 12.1 shall not impose any greater obligation to

E3143137

rebuild, reconstruct or restore than as set forth in Article 9 of this REA.

## ARTICLE 13

{Blank}

## ARTICLE 14

### GENERAL COVENANTS - CENTER APPEARANCE

#### Section 14.1 Location of Buildings

Each of the Parties covenants and agrees with the other that no building, buildings, Floor Area or improvements, other than Common Area Improvements, shall be constructed, erected, expanded or maintained on the May Parcel or Developer Parcel, except within the designated Permissible Building Areas.

#### Section 14.2 Size of Buildings

No Building of May or Developer shall be constructed or expanded other than within the respective Permissible Building Area or other than as otherwise required or limited by this REA.

#### Section 14.3 Height Limitations

No building shall be constructed or expanded which exceeds the height limitations set forth for such building in Exhibit D.

#### Section 14.4 Removal of Developer Buildings

None of the Buildings constructed on the Developer Parcel shall be razed or removed in whole or in part except as otherwise specifically permitted in other Sections of this REA or as may be necessary prior to rebuilding or restoration following damage or destruction, or for a taking by condemnation.

#### Section 14.5 Limitation on Detrimental Characteristics

No use or operation will be made, conducted or permitted on any part of the Shopping Center Site which use or operation is clearly objectionable to the development or operation of the Center. Included among the uses or operations which are

63143137

prohibited because of their obvious interference with Developer's obligation to maintain a balanced and diversified grouping of retail stores, merchandise and services, as well as their obvious detrimental effect upon the general appearance of the Center and conflict with the reasonable standards of appearance, maintenance and housekeeping required by this REA, are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all inclusive:

- (1) Any noise, litter, odor or other activity which may constitute a public or private nuisance;
- (2) Any firing, explosion or other damaging or dangerous hazards;
- (3) Any warehousing not related to a retail operation, assembly, manufacturing, distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
- (4) Any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shop and veterinarians provided they otherwise do not violate other provisions hereof);
- (5) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a smokeless, odorless, clean and sanitary manner, and without exceeding ambient noise levels;
- (6) Any commercial laundry or dry cleaning plant containing greater than 3,000 square feet of Floor Area which services other facilities located off of the Shopping Center, laundromat, veterinary hospital, car washing establishment, or bowling alley, or any mortuary or similar service establishment;
- (7) Any automobile body or fender repair work.

Developer covenants and agrees that May has an interest in achieving a balanced and diversified grouping of retail stores, merchandise and services in the Developer Building(s) and that a balanced diversification of goods and services as is provided for in Article 12 will maximize the merchandising of the Developer Buildings, assist in the application and enforcement of the reasonable standards of appearance, maintenance and housekeeping and promote the traffic and movement of people using the Center for shopping. Accordingly, Developer covenants and agrees that Developer will not permit any occupancy in the Center which is otherwise not in compliance with the provisions of this REA or with a type of tenant that will or does create undue noise, litter or odor.

#### Section 14.6 Non-Interference with Common Area

So as not to interfere with efficient automobile and pedestrian traffic flow in the Center, there shall be no storage, display, sale or solicitation of merchandise or services conducted in the Shopping Center except within Floor Area; provided, however, that with the written approval of all Parties, given or withheld in their respective sole and absolute discretion, there may be conducted by each Party upon its Parcel special Shopping Center-wide promotional events.

#### Section 14.7 Fences; Obstructions

No fence, structure or other obstruction of any kind (except as may be specifically permitted or required herein or as may be indicated on Exhibit B and except for decorative features and customer conveniences) shall be placed, kept, permitted or maintained upon the Common Area.

#### Section 14.8 Changes in Common Area

Except as otherwise provided in this REA, no changes shall be made in the Common Area or the location or design of the Common Area Improvements on a Parcel prior to the Expiration

831433137

Date, except for minor changes to amenities and landscaping mutually approved by the Parties.

Each Party may make minor changes to amenities and landscaping of the Common Area which may be approved by the other Party; provided however, that no such changes and modifications may be made which: (i) shall adversely affect the orderly flow of pedestrian and vehicular traffic in the Center or render either Parcel or the Buildings thereon less accessible to such traffic; (ii) shall reduce the number of parking spaces on the Parcel in question below the number required to be maintained in order to meet the requirements of this REA or applicable zoning laws, or result in a deviation from the standard parking module shown on Exhibit B; (iii) would be inconsistent with the requirements of the minimum technical specifications attached as Exhibit C to this REA; or (iv) would result in multi-level parking; provided, that neither Party shall, at any time, have any right to relocate or materially modify the Access Roads leading to and from the public roadways except as otherwise provided in Article 3.

## Section 14.9 Signs

The criteria for all signs to be installed within the Shopping Center Site is set forth in Exhibit F, which sign criteria the Parties agree and covenant is reasonable, and no signs shall be installed or maintained in the Shopping Center that do not conform to the said criteria. Except to the extent expressly provided otherwise in Exhibit F, the criteria thereof expressly do not apply to the building identification signs and related exterior design on the May Building or to May's pylon sign, the design, style, size, color, configuration and message of which from time to time shall be in May's sole discretion and control.

63143137

If an Occupant wants to install a sign that does not comply with Exhibit F, it must first secure the written consent of all Parties.

Any change or repair made to an initially completed sign is hereby prohibited if it will cause the same not to comply with Exhibit F and in such an event, the changed or repaired sign shall be considered as a new installation and thus shall require the written approval of all Parties.

Section 14.10 Duration of Covenants

The restrictions described in this Article 14 shall be and remain in effect from the date of this REA until the Expiration Date.

ARTICLE 15

CESSATION OF BUSINESS OR  
TRANSFER OR CONVEYANCE OF PARCELS

Section 15.1 Temporary Cessation of Business

Temporary cessation of business by Developer's tenants or by May when necessary for (a) the purpose of taking inventory, so long as such cessation continues for no more than five (5) days, or (b) making alterations or repairs or performing "construction" in compliance with this REA, shall not be deemed a discontinuance of the operation of Developer or May.

Section 15.2 Transfer During Construction; Other Transfers

Developer agrees that it shall not transfer or convey fee title to all or any portion of its Parcel or the Hanover Park Parcel or ground lease the same (except that Developer may at any time transfer or convey the outlot parcels shown on Exhibit B, or enter into leases with Persons for occupancy of its Building(s)), until Developer has completed construction of the Common Improvement Work, Common Area Improvements, and other site work pursuant to the Joint Improvement Agreement and of the Improvements to be constructed by it upon its Parcel and

83143137



the Hanover Park Parcel in accordance with the terms of Section 6.2 of this REA and has fulfilled its building, leasing and opening obligations under Section 12.1, except by way of mortgage, deed of trust, sale and leaseback or any other financing arrangement requiring the transfer of the Developer Parcel (hereinafter collectively called "Mortgage") and any other such transfer during such time shall be null and void.

May agrees that it shall not transfer or convey fee title of all or any portion of its Parcel until it has opened the May Building for business to the public, except by way of mortgage, deed of trust, sale and leaseback or any other financing arrangement requiring transfer of the May Parcel (hereinafter collectively called "Mortgage") or any transfer to a subsidiary of May or as a result of a merger, acquisition or consolidation, and any other such transfer during such time shall be null and void.

Except as provided above in this Section 15.2 regarding a transfer or conveyance by means of a Mortgage, or a transfer or conveyance of any of the outlot parcels shown on Exhibit B, Developer agrees that Developer shall not sell or transfer less than the whole of the Developer Parcel to any Person or Persons. If any transfer or conveyance (including without limitation any Mortgage) is to more than one Person such Persons shall be required to designate one Person or entity (who may be changed from time to time) as the Person with whom May may deal for all purposes (including service of process) on behalf of all such transferees. Developer agrees to deliver to May an agreement signed by any Person or Persons who may purchase or otherwise acquire the Developer Parcel, which agreement shall formally recognize the obligations of such Person or Persons as Developer and the assumption by such Person or Persons as purchasers of all of Developer's obligations,

63143137

responsibilities and duties hereunder; provided, that failure by any such Person(s) to make or enter into any such agreement shall not in any way affect the enforceability of this REA against such Person(s) as successors to or assigns of Developer. Such agreement shall be delivered to May before any such sale or transfer by Developer can become final.

Notwithstanding anything contained in Section 25.10 to the contrary, in the event Developer sells or transfers less than the whole of the Developer Parcel to any Person or Persons and a court of proper jurisdiction upholds such sale or transfer notwithstanding the prohibitions on such sale or transfer contained in this REA, the provisions of Section 25.12 and 25.23 shall be deemed to apply to each such sale or transfer of less than the whole of the Developer Parcel, and this REA shall remain valid and enforceable to the fullest extent permitted by law.

Section 15.3 [Blank]

Section 15.4 [Blank]

#### ARTICLE 16

##### INSURANCE

##### Section 16.1 Duty to Carry Casualty Insurance

Developer shall carry (or cause to be carried) an "all risk" policy of insurance on the Developer Improvements, as they exist from time to time. Developer shall carry (or cause to be carried) an "all risk" policy of insurance on all Common Area Improvements on the Shopping Center Site as they exist from time to time; provided, however, that in the event May maintains its Parcel pursuant to Section 10.8, then during such time May maintains its Parcel pursuant to Section 10.8, May, and not Developer, shall carry (or cause to be carried) an "all risk" policy of insurance on all Common Area Improvements on

89143137

the May Parcel as they exist from time to time. Such insurance shall be so carried commencing with the start of construction by Developer and continuing until the Expiration Date.

**Section 16.2 General Requirements for Casualty Policies**

All policies carried under Section 16.1:

(1) Shall be carried with either the Industrial Risk Insurance Company or with other financially responsible insurance companies rated A-VI in the most recent edition of Bests' Rating Guide, as category A-VI is defined in the 1987 edition of Bests' Rating Guide;

(2) Shall be in an amount at least equal to 100% of the replacement cost (exclusive of cost of excavations, foundations and footings) of the Improvements being insured, but may provide for a deductible of \$500,000.00 or less;

(3) Shall insure against loss or damage from causes that are from time to time included as covered risks under standard insurance industry practices within the classification of "all risks" coverage and difference in conditions coverage, and specifically against the following perils: fire, windstorm, hail, cyclone, tornado, riots, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage;

(4) Shall contain a provision that the same may not be cancelled without at least thirty (30) days' prior written notice being given by the insurer to the other Party;

(5) Shall include debris removal expense coverage; and

(6) During the performance of any construction, repair, replacement, alteration or improvement, shall include broad form builder's "all risk" insurance in amounts not less than those required pursuant to Section 16.2(2), above.

63143137

Section 16.3 Use of Policy Proceeds

Developer's casualty insurance required pursuant to this Article 16 shall contain a clause providing that any loss covered by Developer's insurance shall be payable in trust to a trustee which shall be either (i) a bank or trust company approved by May and Developer, or (ii) an institutional mortgagee (such as a bank, insurance company or federal or state savings and loan association, or a pension trust, real estate investment trust or saving fund society [if such pension trust, real estate investment trust and saving fund society has a net worth in excess of \$30,000,000]) that is the holder of a first mortgage which is a first lien against the Developer's Parcel and the Improvements thereon (hereinafter called "institutional mortgagee") provided such institutional mortgagee shall agree for the benefit of May to be bound by the terms and conditions hereof; it being understood, agreed and covenanted, that all amounts collected on any such policies shall be made available to Developer thereunder for the reconstruction or repair of any building or buildings and other improvements damaged or destroyed, and shall be paid out by the said trustee from time to time as the work of rebuilding, reconstruction and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State of Illinois, showing the application of said amounts as payment for such repairs, rebuilding and reconstruction; PROVIDED, HOWEVER, that it first be made to appear to the satisfaction of the trustee that the amount necessary to provide for reconstruction or repair of any buildings and other improvements destroyed or damaged, as aforesaid, according to the plans adopted therefor, which may be in excess of the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes assured. If the damage is so slight

63143137

that the insurance award is for less than One Hundred Thousand Dollars (\$100,000.00), then the insurance award shall be paid directly over to the insured without the necessity of payment to the trustee as otherwise provided for in this Section 16.3; but this shall not be construed as relieving the insured from the necessity of repairing such damage promptly in accordance with the terms of this REA. The insured shall pay to the trustee all reasonable fees for its services. Any excess of monies received from insurance remaining with the trustee after the reconstruction or repair of such building or buildings or other improvements, if there be no default on the part of the insured in the performance of the covenant herein, shall be paid to the insured.

Notwithstanding the foregoing paragraph, so long as Balcor Real Estate Finance, Inc. or an affiliate or assignee thereof is the first mortgagee on the Developer Parcel, there shall be no obligation on the part of such first mortgagee to use the amounts collected under such casualty insurance for repair, reconstruction or restoration, but (i) if and to the extent such first mortgagee uses the amounts collected for repair, reconstruction or restoration, the foregoing procedures shall be utilized, and (ii) such lack of obligation on the part of the first mortgagee shall in no way relieve Developer of its obligations to repair, reconstruct and restore, or of any of its other obligations under this REA.

Without limiting the obligation to apply proceeds as in this Section 16.3 provided, the requirements of this Section 16.3 as they relate to deposit in trust and disbursements through a trustee shall not be applicable to Developer so long as Developer (or any general partner of Developer) meets the self-insurance requirements of Section 16.8.

Nothing contained herein shall be deemed to modify Developer's obligation pursuant to Sections 9.2 or 10.10.

## Section 16.4 Duty to Carry Liability Insurance

Each Party shall carry (or cause to be carried), until the Expiration Date, comprehensive public liability insurance covering its Parcel and all Improvements situated thereon. Such insurance shall have a combined limit of not less than \$5,000,000 for personal injury to or death of any one person, for personal injury to or death of any number of persons in any one accident, and for property damage. The limits hereinabove required shall be increased or decreased, but not decreased below the dollar amounts, stated above, from time to time such that they are at all times in accordance with the practices then prevailing in the insuring of similar shopping centers. Any disputes between the parties respecting the appropriate limit, shall be resolved by arbitration. Any comprehensive public liability insurance carried by May hereunder on the Common Area of its Parcel shall be excess, and not contributing, insurance to the insurance carried by Developer pursuant to Section 16.7.

## Section 16.5 General Requirements for Liability Policies

All policies carried under Section 16.4:

- (1) Shall be carried with financially responsible insurance companies rated A-VI in the most recent edition of Bests' Rating Guide, as category A-VI is defined in the 1987 edition of Bests' Rating Guide;
- (2) Shall insure against claims for personal injury or death and property damage occasioned by occurrences relating to the Center, and shall provide protection against the following hazards: premises and operations, personal injury, completed operations and broad form property damage;
- (3) Shall provide that the same may not be cancelled or reduced in amount or coverage without at least thirty (30) days' prior written notice being given by the insurer to the other Party;

69143137

- (4) Shall name the other Party, as additional insured; and
- (5) Shall be "occurrence" policies.

Section 16.6 Indemnification By Parties

Each Party (in this Section called the "Indemnitor") shall indemnify, hold harmless and, at the election of the other Party (with counsel reasonably acceptable to such Party) defend the other Party and its officers, directors, employees, agents and partners (in this Section collectively called the "Indemnitees") against all claims, loss, costs, expenses (including reasonable attorneys' fees) and liabilities (in this Article 16 collectively called "Claims") (except to the extent the same is the obligation of the other Party under the other provisions of this REA) arising from:

(1) The death of or any accident, occurrence, injury, loss, or damage whatsoever caused to any natural person or to the property of any Persons as shall relate to or occur in or on the Indemnitor's Parcel during the period from the date hereof to and including the Expiration Date (except to the extent such Claims arise in whole or in part from any active negligence or from a willful act or omission of the Indemnitee and the liability of the Indemnitor is solely derivative and/or based on Indemnitor's passive negligence).

(2) Any act or omission (except to the extent covered in (1) above) whatsoever of negligence or willfulness on the part of Indemnitor, its agents, servants or employees, relating to or occurring in or on the Indemnitee's Parcel, except to the extent caused in whole or in part from any active negligence or from a willful act or omission of the Indemnitee (provided that if Indemnitee's liability is solely derivative and/or based on Indemnitee's passive negligence, such act or omission shall not be deemed caused by Indemnitee).

63143137

Indemnatee shall give Indemnitor notice of any suit or proceeding entitling Indemnatee to indemnification pursuant to subparagraphs (1) and (2), or pursuant to any other indemnities arising under this REA, and Indemnitor shall have the right (and the obligation, if Indemnatee so requires it) to defend Indemnatee in said suit or proceeding with counsel reasonably acceptable to Indemnatee.

**Section 16.7 Contractual Liability Insurance**

Each Party shall maintain until the Expiration Date Contractual Liability Insurance insuring its obligations set forth in Section 16.6, with the same limits as provided in Section 16.4.

**Section 16.8 Self-Insurance; "Blanket Policies"**

Each Party may, subject to the conditions of this Section 16.8, satisfy its obligations under Sections 16.1, 16.2, 16.4, 16.5 and 16.7, in whole or in part, by means of self-insurance or a so-called blanket policy.

Self-insurance may be maintained only if the Party self-insuring has current net assets of at least \$40,000,000.

A blanket "all risk" policy will satisfy the requirements of this Article only if it specifically allocates to the properties and liabilities required to be insured under this Article an amount not less than the amount of insurance required to be carried by this Article; a blanket comprehensive public liability policy will satisfy the requirements of this Article only if it provides at least twice the amount of coverage required to be covered by this Article.

**Section 16.9 Certificate of Insurance**

Each Party shall, on the request of May and/or Developer, if it does not qualify for self-insurance or elects not to self-insure, promptly after issuance and renewal or extension of a policy, furnish the other Party a certificate issued by

63143137



the insurer evidencing the former Party's compliance with the insurance coverage requirements of this Article. A Party entitled and electing to self-insure shall upon request furnish to the other Party, a statement evidencing such qualification and election. No Party so self-insuring shall be required during any given 180-day period to honor more than one such request from the other Party.

**Section 16.10 Release of Liability and Waiver of Subrogation -- Parties**

Each Party on its behalf and on behalf of its insurers and of its successors and assigns hereby releases, and waives all rights of recovery and causes of action against the other Party, its officers, directors and employees, from any liability (including loss of rent or profit) for all losses and damages occasioned to the property (real and personal, tangible and intangible) located within or upon or constituting a part of the Center, which losses and damages arise from a risk of the type generally covered under the types of policies required by Sections 16.1 and 16.2, to the extent that said loss is reimbursed by an independent insurer, even though such losses or damages might have been occasioned by the negligence or fault of such released Person. The policies required by Sections 16.1 and 16.2 shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against the other Party, its officers, directors and employees, with respect to any losses to the extent that (1) the Party suffering the loss is required to be insured by an independent insurer against such losses, and (2) such Party is reimbursed for said loss by said independent insurer.

63143137

## ARTICLE 17

### CONDEMNATION

#### Section 17.1 "Condemnation" and "Condemnation Date" Defined

(a) "Condemnation" means:

(1) The taking of all or any part of the Shopping Center Site or the possession thereof (other than temporary possession of six (6) months or less) under the power of eminent domain or by inverse condemnation; or

(2) The voluntary sale (with the consent of the Party then in possession, the other Party and any other Persons having an interest therein) of all or any part of the Shopping Center to any Person having the power of eminent domain, provided that the Shopping Center or such part is then under the threat of condemnation.

(b) "Condemnation Date" means the earlier of:

(1) The date when possession of the condemned property (or any part thereof) is taken by the condemning authority; or

(2) The date when title to the condemned property (or any part thereof) vests in the condemning authority.

#### Section 17.2 Restoration of Developer Building

In the event that either Party shall receive any notification that the Center or any portion thereof is, or may be, subject to Condemnation, such Party shall promptly notify the other Party of such fact. Subject to the termination rights set forth in Section 17.4, if any part of the Developer Building(s) are taken by condemnation at any time when the May Building or any portion thereof is open for business (subject to temporary cessations of business for repairs, remodeling or restoration by May due to condemnation, casualty or force majeure) and such business consists of retail and/or service and/or commercial, and/or, in not more than 25% of the Floor

63143137

Area in the May Building, general office uses (but office uses which are an integral part of the retail, service or commercial uses occupying the May Building shall not be included in calculating the 25% limitation) Developer shall reconstruct its Building(s) as nearly as reasonably possible to the condition thereof as existed immediately prior to such taking in accordance with the requirements and subject to the conditions of this Article 17. Notwithstanding the foregoing, in the event any part of the May Building is also taken by condemnation, then Developer shall have the right to request, and May shall so notify Developer, as to whether May intends to commence reconstruction of the May Building. All reconstruction hereunder shall include rebuilding and restoring the same to a complete architectural unit. In the event of any such rebuilding of Developer's Building(s), the same shall be done in accordance with the provisions set forth in Articles 4, 5, 6, 7 and 8 hereof and shall be completed with due diligence but in all events within at least fifteen (15) months of such taking.

#### Section 17.3 Restoration of Parking Area

If any Common Area Improvements situated on a Party's Parcel are taken by condemnation at any time prior to the Expiration Date, such Party shall reconstruct said Improvements as nearly as possible to the condition thereof as existed immediately prior to such taking in accordance with and subject to the conditions of this Article 17, so that after such reconstruction the parking ratio set forth in Section 11.1 shall be satisfied, in accordance with the provisions of this REA on the basis of plans and locations approved by the other Party.

Anything hereinabove to the contrary notwithstanding, if the Parking Area on a Parcel shall be taken by condemnation so that after such taking the parking ratio on such Parcel:

83143137

(1) shall be reduced to not less than fifty percent (50%) of the parking ratio provided for in Section 11.1 hereof, the Party to such Parcel shall have no obligation to restore or provide additional parking area, but this REA shall not terminate; or

(2) shall be reduced to less than fifty percent (50%) of the parking ratio provided for in Section 11.1, then this REA may be terminated at the election of such Party by notice given to the other Party, but if such Party does not so elect, it shall, at its cost, use reasonable efforts to restore or provide additional parking on said Parcel, to the extent practicable, equal to the number of spaces required by governmental authority for the continued use of the Party's Improvements. In no event shall a Party be required to provide decked parking on its Parcel.

#### Section 17.4 Termination Rights

Anything to the contrary notwithstanding, in addition to the termination rights set forth in Section 17.3 above, (a) in the event that twenty percent (20%) or more of the Parking Area located within four hundred (400) feet of the May Building shall be taken by condemnation, then, in such event May shall have the right to terminate this REA pursuant to this Section by giving notice to the Developer, and (b) in the event that any of the Floor Area of the May Building or twenty percent (20%) or more of the Floor Area of Developer's Building shall be taken by condemnation, then, in any such event the Party whose Floor Area has been so taken by condemnation shall have the right to terminate this REA pursuant to this Section by giving notice to the other Party.

Any notice required by this Section shall be given to the other Party not later than one hundred twenty (120) days after the Condemnation Date and the termination permitted thereby

63143137

Property of Cook County Clerk's Office

1990

shall be effective automatically on the sixtieth (60th) day after the giving of such notice.

## Section 17.5 Waiver of Award

In the event a Parcel or any part thereof is taken by condemnation, each Party waives, in favor of the Party whose Parcel or any part thereof is taken by condemnation, any value of the condemnation award attributable to any easements (other than easements for Separate Utility Facilities, Common Utility Facilities and Perpetual Access Roads) a Party holds in the Parcel of such other Party; and no part of such award shall be payable to the holder of the dominant tenement by virtue of such easement. However, a waiver under this Section shall not preclude the holder of any interest in another Parcel from claiming and collecting the severance and consequential damages to its own Parcel resulting from the taking of the condemned portion of the other Parcel. This waiver shall not apply in the event there is a default in the restoration required pursuant to Section 17.3.

## Section 17.6 No Termination of Easements and Licenses

No termination under this Article of a Party's obligations to restore, operate, and maintain as provided in this REA shall affect the existence of the easements granted under Article 3, except that the covenants and easements which benefit the land taken by condemnation shall terminate as to such land.

## Section 17.7 Instrument Evidencing Termination

Upon the request of a Party, all Parties shall sign and exchange an instrument in recordable form evidencing the termination of the REA and/or a Party's obligations pursuant to this Article 17.

## Section 17.8 Termination of Benefits

In the event of a taking by condemnation of any portion of the Shopping Center, all easements, covenants and servitudes

63143137

appurtenant to and/or benefiting the portion so condemned shall, upon the taking of such portion, terminate to the extent they are appurtenant to and/or benefit such portion, but shall continue as to any portion not so condemned.

## ARTICLE 18

### REAL ESTATE TAXES

#### Section 18.1 Payment of Taxes

Subject to the provisions of the Supplemental Agreement regarding certain "Special Service Area Assessments," each Party shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively called "Taxes") levied on its Parcel and the Improvements situated thereon; provided, however, and subject to the terms of the Supplemental Agreement regarding Special Service Area Assessments, that in addition to the foregoing Developer shall pay any and all taxes that are special taxes, assessments, levies or charges affecting both the May Parcel and the Developer Parcel which are made or approved by any public entity for any improvements installed on-site or off-site (as to the Shopping Center Site) in the initial development of the Center, whether levied or payable prior to or subsequent to closing.

#### Section 18.2 Contesting Taxes

Each Party may, at its own cost contest Taxes, by appropriate proceedings contest the validity, applicability and/or the amount of any Taxes. Nothing in this Article requires a Party to pay any Taxes as long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Parcel to be forfeited to the imposition of such Taxes as a result of its non-payment.

63143137

## Section 18.3 Failure to Pay Taxes

In addition to the terms of the Supplemental Agreement regarding Special Service Area Assessments, if a Party fails to comply with this Article, any other Party may pay the Taxes in question and penalties and interest thereon and shall be entitled to prompt reimbursement from the defaulting Party for the sums so expended with interest thereon as stated in Section 25.7.

## Section 18.4 Allocation of Taxes

If each Party's Parcel is not separately assessed, the Parties shall cooperate in and endeavor to obtain separate assessments as separate tax parcels for each Parcel.

So long as the Parcels are not separately assessed, the Parties shall apportion Taxes among themselves on the basis set forth in the Purchase and Sale Agreement by which May acquired the May Parcel from Developer, or if not so expressly provided therein, then on a fair and equitable apportionment of the assessed value.

## ARTICLE 19

### EXCUSES FOR NON-PERFORMANCE

Notwithstanding anything contained in this REA, each Party shall be excused from performing any obligation under this REA, and any delay in the performance of any obligation under this REA shall be excused, if, but only so long as, the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities

83143137



or any other cause, whether similar or dissimilar to the foregoing, not within the control of such Party (other than lack of or inability to procure or tender monies to fulfill its commitments and obligations under this REA). Any reference to "unavoidable delay" or similar phrase contained in this REA shall be deemed to mean a delay of the nature described in the preceding sentence.

Notwithstanding any specific references in certain provisions of this REA to this Article 19, the absence of such specific reference in any other provision shall not be deemed to diminish the general applicability of this Article 19.

69143137

## ARTICLE 20

### ARBITRATION

#### Section 20.1 Disputes Subject to Arbitration

Any dispute arising under Section 25.16 or Section 25.22 or any other dispute that this REA specifically makes subject to arbitration shall be resolved by arbitration under this Article. However, nothing herein requires arbitration of any dispute arising under this REA for which injunctive relief is sought by any Party or of any dispute not specifically herein made subject to arbitration.

#### Section 20.2 Arbitration Procedures

If the Parties are required to agree on an arbitrable dispute and cannot reach an agreement within thirty (30) days after notice of an arbitrable dispute is given by either Party to the other Party, then either of the Parties may at any time within ten (10) days after the end of said thirty (30) day period refer the dispute to arbitration by giving notice of demand therefor to the other Party pursuant to Section 21.1 of this REA, and both Parties agree to cooperate in obtaining such arbitration.

Within five (5) days of such notice referring the dispute to arbitration, each Party shall designate one person, as hereinafter provided, to represent it as an arbitrator, and shall provide such bonds or other assurances of performance of the arbitration award as may be required by applicable arbitration law. Each Party hereby expressly agrees that the agreement to arbitrate contained in this Article 20 shall be deemed to be, and is hereby adopted by the Parties as, a rule of court in any court having jurisdiction to enforce this agreement to arbitrate, and the Parties shall execute such supplemental agreements confirming such adoption by the Parties as may be necessary to permit arbitration or enforcement thereof under

69143137

applicable arbitration law. The arbitrators so appointed by the Parties shall promptly designate one additional person as arbitrator so that the total number of arbitrators shall be an odd number. If the first two are unable to select a third arbitrator within five (5) days following their appointment, he shall be selected by the Chief Judge of the U.S. District Court of the District where the Shopping Center is located, upon application of either Party, or in case of such judge's failure or refusal to so act, by the judge of any court having jurisdiction to enforce the Parties' agreement to arbitrate. Any person designated as an arbitrator shall be neutral and impartial and shall be knowledgeable and experienced in the matters sought to be arbitrated, but shall not then be, and shall not have been at any time in connection with the construction, operation or maintenance of the Shopping Center, in the employment of either Party, directly, indirectly or as an agent, except in connection with the arbitration then proceeding. If the dispute to be arbitrated deals with construction, the arbitrator so appointed shall be experienced and knowledgeable in the construction industry as it relates to the nature of the structure to which such arbitration applies. Similarly, any arbitrator appointed in an architectural dispute shall be qualified as respects architecture in strip shopping centers.

The arbitrators may meet or otherwise confer on an informal basis as deemed necessary by the arbitrators at any time, and shall hold a hearing on the dispute not more than thirty (30) days from the date on which the arbitrators have all been selected, but not earlier than the earliest date permitted under applicable arbitration law. A decision of a majority of the arbitrators will be binding upon the Parties. The decision of the arbitrators shall be in writing, shall set forth the grounds thereof, and shall be made as promptly as possible

63143137

after the hearing date, and in no event later than thirty (30) days after the date of the hearing. A copy of the decision of the arbitrators shall be signed by at least a majority of the arbitrators, shall be attested to as required by law, and shall be given to each Party in the manner provided in Article 21 of this REA for the giving of notices.

All arbitration proceedings pursuant to Article 20 shall be conducted in accordance with the rules of the American Arbitration Association relating to commercial arbitrations, except to the extent such rules conflict with the provisions hereof, and with the requirements of applicable arbitration law.

The arbitrators shall have no authority to pass upon issues of law and shall have no power to pass upon the validity, enforceability or fairness of any provision of this REA to any Person or to any situation. No Person other than a Party shall be a party to any arbitration proceeding without the consent of both Parties, in their sole and absolute discretion. The arbitrators shall have no power to subpoena witnesses or to order discovery except to the extent mandated by applicable arbitration law, and the Parties shall be entitled to claim all privileges available to them in a judicial civil proceeding.

For each arbitrable dispute the cost and expense of each Party's arbitrator shall be paid by such Party and the cost and expense of the third arbitrator and of the arbitration proceeding (except that each Party shall bear its own attorneys' fees) shall be paid and shared equally by the Parties. No damages of any kind, and no monetary remedy or other remedy except as specifically set forth in the particular provisions of the REA applicable to the dispute, shall be awardable in arbitration.

69143137